No. 33
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Office - Supreme Court,
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VOLUME V

TRANSCRIPT OF RECORD

SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1952

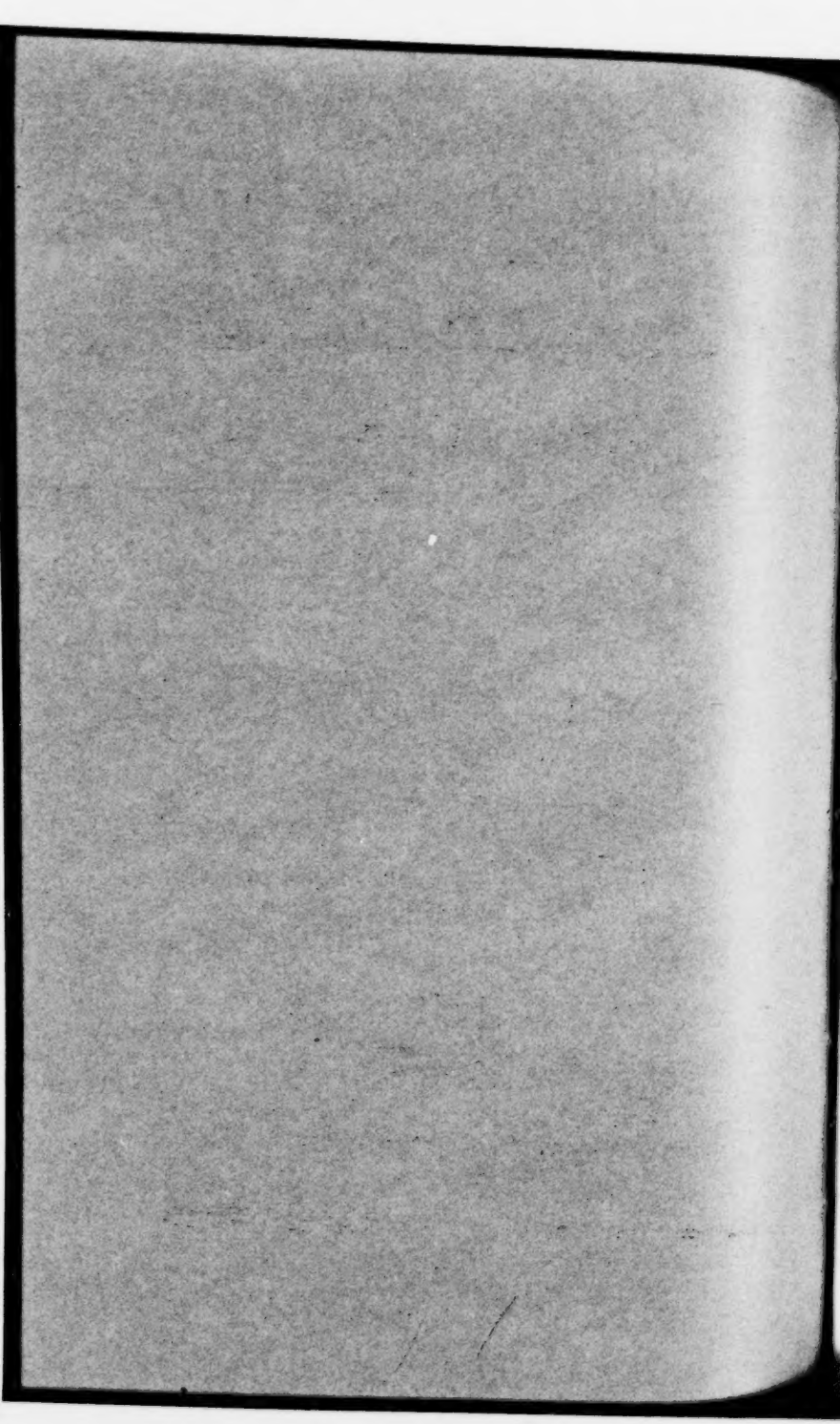
No.

ST. JOE PAPER COMPANY, ET AL.,
Petitioners,

versus

ATLANTIC COAST LINE RAILROAD COMPANY
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.



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Volume II—Pages 321 to 520, inclusive

TRANSCRIPT OF RECORD

UNITED STATES

COURT OF APPEALS

FIFTH CIRCUIT

No.

In the Matter of

FLORIDA EAST COAST RAILWAY COMPANY,
Debtor.

ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.,
Appellants,

versus

ST. JOE PAPER COMPANY, ET AL.,
Appellees.

Appeals from the District Court of the United States for the Southern District of Florida

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(ORIGINAL RECORD RECEIVED MAY , 1949)

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Q. How long have you held that position? A. I have been acting secretary for the Committee since April, 1943.

Q. Would you state who are the members of that Committee, and who each member represents? A. Mr. Arthur M. Anderson is chairman of the Committee. He is vice-president and chairman of the executive committee of J. P. Morgan & Company, Incorporated.

D. C. Borden, member of the Committee. He is vice-president of the National City Bank of New York.

Mr. Henry Sturgis, a member of the Committee. He is vice-president of the First National Bank, New York.

Mr. Harry Hagerty, member of the Committee. Vice-president and treasurer of the Metropolitan Life Insurance Company.

Q. How many of these institutions participated in the original syndicate which floated these bonds? A. The three banks were identified with the original sale of the bonds.

Q. What was the original position of the Metropolitan Life? A. The Metropolitan was a large holder of First and Refunding Mortgage bonds.

Q. Would you state the amount of bonds now on deposit with the Committee, or on deposit at some recent date, and the number of depositors? A. On January 3, 1949, there were $572,400 Principal amount of bonds on deposit with 260 depositors.

Q. Do these holders, under the deposit agreement, at present, have a right to withdraw, without payment of any expenses of the Committee? A. Indeed they do.

Q. How long have they had that right? A. They have been able to withdraw without payment of any expenses ever since 1943. Ever since I have been connected with the Committee.

Q. And possibly before that? A. And possibly before that.

Q. Does this Committee believe that the Commission's plan is better from the dollar and cents standpoint for the First and Refunding Bondholders than the previous plan

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adopted by the Commission in 1945, which provided for a separate reorganization of the company? A. Yes.

Mr. Patterson: Just a minute. On what authority do you make that statement? A. I am speaking for the members of the Committee.

Mr. Patterson: Are you authorized to make that statement? A. I am authorized to speak for the Committee.

Mr. Patterson: All right.

By Mr. Crossman:

Q. Go right ahead. A. The Committee believes that the present Interstate Commerce Commission plan is a better plan for the bondholders than the old Examiner's plan, and I have been so authorized to testify by that Committee.

Q. Has that been the position of the Committee since the Atlantic Coast Line Railroad Company first proposed its plan in these proceedings? A. Yes, it has been.

Q. Is the present Commission plan, in your judgment, a better plan for the bondholders than the original plan proposed by the Atlantic Coast Line Railroad Company? A. I think it is.

Q. Substantially so? A. The original Lynch proposal?

Q. No, I am referring to the one which the Atlantic Coast Line Railroad Company proposed, I believe, at some time in the fall of 1945? A. Yes.

Q. Which was modified by the Commission? A. Oh, yes, it is better.

Q. In your opinion, the present Commission plan is substantially better than that? A. It is the best of any that has been produced.

Q. Was this matter reviewed by the members of the Committee at a recent meeting? A. Yes, sir.

Q. On what date? A. On December 30, 1948, a committee meeting was held at which all members were present and it was the unanimous view of the members that the Interstate Commerce Commission's plan was a far better plan.

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Q. And at that meeting they authorized me as their counsel, and you as secretary, to come down here and present the views of the Committee in some detail to the Court? A. They did.

Q. Did you prepare the figures which were before the Committee when they considered this decision? A. Yes, I did.

Q. Were the figures to which you will testify, or would the figures to which you will testify, in general, be the same as those upon which the Committee formed its judgment? A. Yes, they will.

Q. Have you an exhibit entitled "I. C. C. Estimate of Market Prices and Values of Cash and Securities Offered each $1,000 F. E. C. First and Refunding Bond"? A. I have.

Q. Did you prepare that exhibit yourself? A. That exhibit appeared in the fourth supplemental order of the Commission dated March 25, 1948.

Mr. Crossman: I offer it in evidence.

> . . . The instrument last above referred to was received and filed in evidence and marked Five Per Cent Committee Exhibit No. 1.

By Mr. Crossman:

Q. Did the Commission, in the report of March 25, 1948, term this an obvious conservative estimate? A. It did.

Q. Do you agree? A. The prices of Coast Line outstanding securities are approximately the same now as they were then. I think it is still a conservative value of the package value of the cash and securities.

Q. That total is what? A. $686.50.

Q. You believe that is a conservative estimated value of the package value under present market prices? A. Under present conditions.

Q. Is there an additional payment of cash under the Commission's plan over and above the ninety-one dollars

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odd to be paid out of the Coast Line's own treasury, which would be forthcoming for the bondholders under the Commission's plan that would not be forthcoming under the previous plan for independent reorganization? A. Yes. The Committee feels that the Coast Line would have to pay the liens of the A and B orders in full.

Q. Will you explain a little bit what that means? A. Well, under the latest Interstate Commerce Commission's plan there was set aside at December 31, 1945, out of the resources of the Florida East Coast, in addition to the twelve million provided for the retirement of the first mortgage bond issue, a reserve fund of about ten million seven to carry out a specific additions and betterments program, providing for reorganization expenses, working capital and certain other items.

The Commission's plan contemplates that all the remaining cash in the Florida East Coast and all the earnings of the Florida East Coast after December 31, 1945, would go to the refunding bondholders. Since 1945, the Florida East Coast has spent additional amounts for additions and betterments that were not contemplated in the original reserve fund.

Q. And what did Judge Strum do with respect to those amounts? A. Judge Strum has given the Florida East Coast refunding bondholders liens on those funds.

Q. And it is your idea, I take it, that the Atlantic Coast Line Railroad Company, before the consummation of the plan, or thereabouts, will have to clear those liens by a payment in addition to the $91.67? A. That is my understanding.

Q. And, in an independent reorganization, would there be any way of clearing those liens by cash payments? A. There would be no cash remaining in the Florida East Coast Railway Company to do it. Under the independent plan, the cash would be distributed to the bondholders the same as under the Interstate Commerce Commission's plan.

Q. But, of course, if it were an independent plan, the

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bondholders, as stockholders, owning all of the equity, would have countervailing equity in the additions and betterments? A. Oh, yes, they would have a first equity in those A and Bs.

Q. In your judgment, which would be preferable from the point of view of the bondholders? First equity in these A and B's, or the cash? A. I would think the cash plus the sixteen per cent equity that they would get through the Interstate Commerce Commission's plan.

Q. Now, under the Commission's plan, and the separate plan formerly approved by the Commission, the amount of excess cash tends to be the same, as I understand? A. That is correct. It might be a very substantial sum. It would be the same under either plan.

Q. For that reason you have left that cash out of your calculations which we are about to come to? A. I have, yes.

Q. You included the $91.67, of course, that comes from the Coast Line, in your calculation of the Commission's plan, but you have not, as I understand, included a figure for the so-called A and B betterments because of the difficulty of knowing what they may be? A. At the present time, the lien orders cover a little more than three million dollars of A and B's, which is about seventy dollars a thousand dollar bond. I don't think anybody can tell at this time.

Q. It may be larger? A. It may be much larger.

Q. And it may be less? A. It may be less.

Q. That is not a matter to be tried before this Court at this time, as I understand it? A. No.

Q. Will you turn to the plan of independent reorganization approved by the Commission in 1945, and state generally what that provided? A. The plan for the independent reorganization provided that all of the excess cash in the road would be paid over to the bondholders, as is provided under the Interstate Commerce Commission's present plan, so I am eliminating that cash.

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In addition to that, for each one thousand Florida East Coast bond, the independent plan provided for the payment of 450 principal amount in Florida East Coast income bonds, and four and one-half shares of new Florida East Coast stock.

Q. In your judgment, is it possible to value that package of— A. It is. It is more difficult to value this package than the Coast Line package where securities of a similar sort are outstanding.

Q. Preliminarily to trying to evaluate this package, have you prepared an exhibit entitled, "Coverage and Earnings for the Securities That Would be Issued by the F. E. C. under the Various Estimated Levels of Normal Income"? A. Yes, I have.

Q. Under various levels of normal earnings? A. Yes, sir.

Mr. Crossman: We offer it in evidence.

> . . . The instrument last above referred to was received and filed in evidence and marked Five Per Cent Committee's Exhibit No. 2.

By Mr. Crossman:

Q. Will you state what are the various estimates of earnings that you have used in the preparation of this exhibit? A. Well, in the recent reorganization hearings, there have been a good many estimates of future normal earning power of the Florida East Coast Railway Company made. The du Pont estate estimated income available for charges in a normal year at a million three hundred and eighty.

Q. What was that? A. A million three hundred and eighty. The Interstate Commerce Commission, after considering all of the facts, has estimated a million five. These estimates are after income taxes.

Q. And before charges? A. Before.

Q. After taxes? A. After taxes. Mr. Gordon and Mr. Kennedy, witnesses for other parties, estimated the

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future income available for charges before income taxes at a million nine forty-seven and two million three six three, respectively, for a normal year. We applied the pro forma—if we apply the thirty-eight per cent tax rate to those earnings, we find that is equivalent to income for fixed charges of $1,588,000 and $1,845,000, respectively. On the record, therefore, the earnings of the road are fairly well defined in the record, within reasonable limits.

Q. Have you prepared an exhibit with two headings, one "Comparison of Various Railroad Income Bonds", and the other, "Comparison of Various Railroad Common Stocks"? A. Yes, I have.

Q. Will you explain on what basis that was prepared? What was your basis of inclusion of certain railroads in this? A. Well, in the preparation of this statement, we tried to get a pretty wide list of railroad income bonds in order that they will be representative. In the comparison of the stocks we have used all of the stocks from the income bond roads, and certain additional stocks in order to give a representative picture.

Mr. Crossman: We offer the exhibit in evidence.

> . . . The instrument last above referred to was received and filed in evidence and marked Five Per Cent Committee's Exhibit No. 3.

By Mr. Crossman:

Q. Based on the earnings estimates contained in Exhibit 2, and also on the comparisons which you can draw from Exhibit 3, will you state, first, what would be the times that the income bonds of the independently reorganized Florida East Coast would earn their charges on the Interstate Commerce Commission's normal earning basis of a million and a half a year? A. The Florida East Coast income bonds would earn them about one and a half times.

Q. What would be the earnings, per share, of the proposed common stock? A. About $2.50.

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Q. In your opinion, based on such earnings, and based on the comparison with other railroad securities, at what price could the income bonds sell? A. I think, if the Interstate Commerce Commission's estimate of a million and a half of normal earnings should develop, the income bonds would probably sell about seventy-five and the common for about twenty-five. Under present conditions, I doubt that they would sell quite that high.

Q. You are basing those estimates in other words, on better market conditions for railroads than at present exist? A. Yes, sir.

Q. You based your estimate of the Atlantic Coast Line's package, as I gathered it, on present market conditions? A. Yes.

Q. Will you state at what price, in your opinion, these income bonds would sell for, and the common stock would sell for, if you had income after taxes available for charges of $1,845,000? A. I think that under those conditions, the income bonds would sell for about ninety, and the common for about forty.

Q. Without assuming the validity of Mr. Gordon's additions and deductions in his Exhibit 27, but simply taking his testimony of $2,850,000 as a sum available for fixed charges, and taxes for a normal year, what would the balance be for taxes so as to carry it out along the lines of our exhibits? A. Assuming the income available for fixed charges as $2,850,000, income available for charges after income taxes with the thirty-eight per cent rate, would be $2,150,000 a year, which would be, or which would provide coverage for the income bonds of 2.1 times and mean earnings of about $5.75 a share for Florida East Coast common.

Mr. Milam: What amount did he adopt there as fixed charges to be deducted before taxes?

Mr. Crossman: I was coming to that.

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By Mr. Crossman:

Q. I want you to explain your method a little bit more.

The Court: It would be the same, no matter what the income.

A. I have assumed a million dollars worth of charges on the Florida East Coast Railway Company.

Q. Why don't you carry your calculations down as you did in the exhibit?

The Court: Do you know what they are? Do you mind telling us what they are?

A. The charges on income bonds would be $910,000. There are a full four millions of Equipments outstanding now, maybe more, which would be about ninety thousand.

By Mr. Crossman: Does that answer your question, Mr. Milam?

Mr. Milam: Do I understand that whatever may be the earnings, you used one million dollars fixed charges? A. I have used a million dollars for charges.

The Court: That income tax, is that 38 per cent?

A. Yes, I have deducted the million dollars——

Q. That does operate, actually? Thirty-eight per cent? A. Yes, sir.

By Mr. Crossman:

Q. Why don't you go down this column and make these figures comparable to what was in Exhibit No. 2? A. You mean, so people can compare them if they want to?

Q. Yes. A. Well, sir, this $2,363,000 in Exhibit 2, estimated before charges and income taxes, would become $2,850,000. The approximate charges would be a million dollars. Leaving $1,850,000 as a balance on which income tax was payable. Thirty-eight per cent of that $1,850,000, is $700,000, which leaves, deducting that from the $2,850,000, leaves $2,150,000—wait a minute. Maybe I—That would leave income available for charges after income tax of $2,150,000. The charges again would be one million dollars.

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That would be covered 2.1 times, and the earnings per share would be $5.75.

Q. Have you prepared an exhibit showing the package value of the Florida East Coast securities, offered each one thousand dollar F. E. C. First and Refunding bond owner—this is entitled "Examiner's Plan", but I take it, it is the same plan as the Interstate Commerce Commission's plan of 1945? A. That is right.

Q. Under two estimated levels of normal earnings? A. Yes, sir, using the prices I have stated, seventy-five and twenty-five and ninety and forty.

Mr. Crossman: I offer that in evidence.

> . . . The instrument last above referred to was received and filed in evidence and marked Five Per Cent Committee's Exhibit No. 4.

By Mr. Crossman:

Q. At the risk of repeating slightly, as I understand it, these package values are based on considerably better market conditions than prevail at present? A. Yes, I have assumed in each case, the ratio of ten times earnings for the Florida East Coast common stock. Ten times earnings is a relatively high ratio today for railroads.

Q. To bring this exhibit also down to conform with Mr. Gordon's statement this morning—Again, without conceding that he is correct in any way, I would like to have you state what values you think these bonds and stocks might sell at under better market conditions? A. Well, under the same favorable conditions as used in the rest of my exhibits, if earnings did develop as large as $2,850,000 before taxes, in a normal year, I think the income bonds would probably sell for about 95 and the common, assuming ten times earnings, were or would be priced at $57.50.

Q. Or, a total of what? A. The total package value is $680.00; approximately $680.

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The Court: What do you mean "ten times earnings"? Dividends, multiplied by ten?

A. No, the earnings of the road multiplied by ten. Price earnings ratio. The earnings per share of the security.

By Mr. Crossman:

Q. That is available for common stock? A. Yes.

The Court: That amounts to the same thing.

A. That is right.

Q. Divided up among the shareholders, you multiply it by ten and get the amount? A. Yes.

By Mr. Crossman:

Q. It would not be the same thing as a dividend. It is the earnings. A. It is not the dividend rate on the stock. It is the earnings.

The Court: Available for dividends?

A. That is correct.

By Mr. Crossman:

Q. Under Exhibit 4, as I understand it, showing a package value of $450.00 in earnings at the level the Interstate Commerce Commission has projected, $585.00, at the level which I believe Mr. Kennedy testified to, and $675.00, at the level Mr. Gordon testified to this morning, what in your opinion would be the comparable price for the Atlantic Coast Line package of securities, just the package of securities, if you use a like estimate of ten times earnings for the common stock? A. Well, I have not done that. That is Mr. Gordon's estimate. On the basis of a million eight, the value would be—the package value would be more than eight hundred for the Coast Line securities, using a ten times earnings ratio for the Coast Line Common stock. The same as if used in the case of the Florida East Coast

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Railway, and it would probably be somewhere around the same under Mr. Gordon's figures for the Coast Line.

Q. I think I mis-stated it to you, Mr. Stott. I am sorry. What I meant was, what would be your valuation of the Coast Line package if you applied the same—if you assumed the same favorable market conditions for the securities delivered by the Coast Line under this Commission plan that you have assumed in arriving at the values contained in our Exhibit 4 for the Florida East Coast package? A. Well, now, which value do you mean? For the $585?

Q. No, I mean, just take the value of the Coast Line package which you valued and the Interstate Commerce Commission has valued under present market conditions as some six hundred and eighty dollars? A. I am sorry. I misunderstood you.

Q. If you were to value those on the more favorable market conditions under which you valued the Florida East Coast package, what would they be worth in your judgment? A. If I valued the Coast Line common at ten times earnings, as I have the Florida East Coast Railway common, the value of the Coast Line package would be more than eight hundred dollars.

Q. Do you want to comment any further on Exhibit No. 4, Mr. Stott? A. Well, I feel that under present circumstances, a price of seventy-five for Florida East Coast income bonds, and a price of twenty-five for Florida East Coast common, would be very generous prices. If you will look at Exhibit——

Q. Number 3, I think it is. That is the big one. A. Yes, I have it here. If you will look at Exhibit 3, you will see that almost any other income bond that is earning its charges on about the same basis as the Florida East Coast at the present time, it is selling well below seventy-five. As an example, Seaboard Air Line is earning their charges better than the Florida East Coast incomes would, and are selling at sixty eight.

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The Court: Is it true that all of these organizations, these reorganizations, or reorganized railroads are getting more? The market or better for their stock than those that are not? I notice the Western Pacific is in that shape and the Seaboard is in that shape. They are both reorganized?

A. I did not understand your question.

Q. The Atchison, Topeka & Santa Fe is way up. There is such a difference, then ten dollar total did not work? A. No, at the present time, their securities are selling at three to four times earnings.

Q. Some are and some are not? It depends on who works on them. A. No, I do not think you will find any selling at ten times earnings. The last column is in the lower half——

Q. The top one is the Atlantic Coast Line. You say that is ten times. Earnings 5.0, market price 45. A. No, sir, Atlantic Coast Line, present Atlantic Coast Line common is earning nine dollars a share. It is selling at forty-five.

Q. 1946 estimated earnings at five dollars. Selling at five dollars times earnings.

The Court: I misunderstood you.

Mr. Crossman: It would have to sell at ninety, to sell at ten times earnings.

A. Florida East Coast, I have estimated, would earn 3.20 a share in 1948. The basis of that estimate is two million dollars of income available for charges before income taxes. I do not think Florida East Coast will earn that because the estimate was made on the basis of ten months figures and the eleven months figures are out and weren't as good as I had expected. But, on $3.20 earnings if the Florida East Coast common would sell at the same price earnings ratio as Santa Fe, for example, a very good railroad stock; sell for four and a half times estimated '48 earnings, Florida East Coast common would sell for about

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fifteen dollars a share. In other words, in picking a price of twenty-five dollars a share, I have taken a very liberal price earnings ratio for Florida East Coast.

By Mr. Crossman:

Q. What is the earnings ratio of the stock of Seaboard? A. Seaboard Air Line this year will earn about ten dollars, and on the date these prices were made up, it was selling at 17 or 1.7 times earnings.

Q. That is, estimated 1948 earnings? A. That is right.

Q. What about Rock Island? A. Rock Island will earn about eleven dollars in 1948 and will report about eleven dollars in 1948, selling at 32, or at 2.9 times earnings.

Q. At what price would these internal reorganization Florida East Coast income bonds have to sell and the stock sell in order to make the package value of securities under the independent plan as large as under the Commission's plan? A. The Florida East Coast income bonds would have to sell at par and common stock at 55 in order to make the package value of securities offered under the independent as large as under the Interstate Commerce Commission plan.

Q. You think it is wholly impossible for them to sell at any such prices under present market conditions? A. Under present market conditions, I don't think there is any chance that they would sell at such a price.

Q. If present conditions show a change for the better and the Atlantic Coast Line continued to earn what it has, and the Florida East Coast what it had, would it have a similar effect on the Atlantic Coast Line market values? A. Yes. I think Florida East Coast securities under other conditions could sell at much higher prices than I have indicated, but under these conditions, the Atlantic Coast Line would also sell at much higher prices.

Q. Assuming the same level of earnings? A. Assuming the same level of earnings.

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The Court: Don't you think we had better rest now? I am a little tired, also, and I do not want to interrupt the witness.

(Witness temporarily excused.)

The Court: We will recess now until ten o'clock in the morning.

. . . And thereupon Court adjourned to be reconvened at ten o'clock in the forenoon, Wednesday, January 12, 1949.

. . . And at ten o'clock in the forenoon, Wednesday, January 12, 1949, Court reconvened pursuant to adjournment of the preceding day, and the following further proceedings were had.

The Court: Before we go along with Mr. Stott, there are a few things I wish to say about what occurred on Monday with respect to the evidence you offered, Mr. Patterson, about the Coast Line proposition, that was excluded as irrelevant from consideration of the merit of the plan that is involved. I adhere to that decision, but it occurred to me it might be material on the question of compensation, if it gets around to that; to the Coast Line interests. I do not make any ruling on that. In fact, the compensation for the Coast Line interests has not been broached, even before the Commission.

Mr. Bourne: The Commission deferred it.

The Court: There is no application then.

Mr. Patterson: I did not know your Honor was going to make a definite ruling on it. I had a decision of the Supreme Court of the United States that I desired to present to you.

The Court: Yes, sir, I have to be reviewed by the Supreme Court. I just wanted to explain the ruling I made on Monday.

The other thing was this, in reference to the Trustees of the First Mortgage bonds. The statement was made

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and a brief presented in which reference was made to General Order Number 18, That is definitely a miscitation in the brief, because General Order No. 18 has to do with sales and not reductions. This General Order No. 28 has to do with reductions and matters of that sort, and I take it that was the general order intended.

Mr. Milam: Yes.

The Court: It appears to me that we have not got to that problem yet, for further argument. I would like for you to think about it, so that when it comes time to take up the question again about General Order No. 28, it can not be looked to with any authority in the 77 proceedings because of General Order No. 49 of the 77 proceedings which excluded it. That leaves the authority in Section 77 itself, and that would be, I think, what I would have to think about, and would want you to think about as to whether or not Section (1) of 77, sub-section (1) says that equities, powers, duties and obligations are just like they would be if there had been an adjudication. Construction of that (1) involves whether that means an immediate adjudication in bankruptcy. But, it doesn't mean that. I do not know what it does mean, but it does not mean what I suggested. Then we are thrown back on what a bankruptcy court would and should do under circumstances at this time. I want you to think about that because this savings of one thousand dollars a day while this protracted litigation goes on, is a large matter. Also, the contract rights of the First Mortgage bondholders represents a serious question. I was under the impression a bankruptcy court cannot do all of these things and it can, under the general order you speak of. I am a little bit worried about where the Court stands under Section 77 on a matter like this. I think the Supreme Court, in excluding some general orders, had in mind the Interstate Commerce Commission had jurisdiction under 77. The things that a Court might do, ordinarily ought not to be done independently of the Commission under Section 77. That thought is in my mind very largely. I think Sec-

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tion 77 clearly indicates as part of the plan, all this can be done. Just whether or not independently of the plan, or when no plan is before the Court, we might check in that shape. On this plan particularly. What the Court ought to do about the situation. Just think about it.

Mr. Barringer: Was your Honor expecting further argument on this subject, or do you want a brief?

The Court: Yes, I have not made up my mind on all of it. I just wanted to tell you so that you could tell me. You want to finish with Mr. Stott first.

Mr. Bourne: Mr. Crossman has said he would not mind me asking for a ruling on this date that Mr. Ball is or has been requested to produce, and which I understood is in Court now.

Mr. Patterson: If Your Honor please, I would like to ask Mr. Bourne as to whether he expects to put the deposition in?

Mr. Bourne: I expect to read parts of the deposition.

The Court: Well, either one of you can put them in. They are evidence to be used by either side.

Mr. Patterson: No, sir, I cannot use it.

The Court: Why?

Mr. Patterson: Not until he puts it in.

The Court: Why?

Mr. Patterson: I cannot use it if the witness is available. I have some exhibits. I do not want to be put in a position of delivering that for inspection prior to the ruling upon them. I take it they are the exhibits that I told Mr. Bourne I would not produce. One of them it is an utter impossibility, without an enormous amount of work to be done on it, and I cannot see that it has any relevancy to this case at all.

The Court: That isn't an exhibit. It is information. If I understand it, an exhibit, that is one thing, and making up the paper is something else.

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Mr. Bourne: I wonder if the orderly manner would not be for me to specify what I asked for and find out if they are here, and see if I can get them or not.

The Court: All right.

Mr. Bourne: The first thing I asked for would be the minutes of the meetings of the Trustees of the Will of Alfred I. duPont, containing any reference to the Florida East Coast Railway Company reorganization.

Mr. Patterson: I have copies of them here.

Mr. Bourne: May I examine them?

Mr. Patterson: Not unless the Court rules on them. Or until the Court rules on them.

The Court: You say they are irrelevant?

Mr. Patterson: Yes, and have no bearing on the issues of this case.

The Court: I will have to read them to see.

Mr. Bourne: May I not read them also, so I can base my argument on them?

The Court: Yes, sir.

Mr. Bourne: Your Honor, this is a charitable trust, and I do not recognize anything that has anything to do with this charitable trust that should not be made public.

The Court: I do not know. You look at it and see what part of it you want. I will not admit the whole thing, of course.

Mr. Bourne: May I examine them?

The Court: Yes, they are here in response to what I called "a gentleman's agreement" the other day.

Mr. Bourne: Yes.

The Court: Look at them and see if there are any parts you want to introduce and show it to Mr. Patterson and see if he wants to object. Then I will rule. I am prepared to rule now that they are not admissible.

Mr. Bourne: May I examine them and others, and introduce them, if I choose, as a part of my case?

The Court: Of course. You are asking for some sort of ruling now.

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Mr. Bourne: Simply as to the production.

The Court: They are here. What are the others?

Mr. Bourne: Minutes of the Trustees of the duPont Trust relative to $1,740,000 of bonds purchased from St. Joe.

Mr. Patterson: That was furnished you at the hearing. We gave them to you in the afternoon.

Mr. Bourne: Are they available?

Mr. Patterson: No, not now. Mr. Russell and I brought it over, with Mr. Main. It is not mentioned in the evidence, as far as I can see, but we brought it to you that afternoon.

Mr. Bourne: Minutes of the duPont Trustees relating to transactions referred to in Exhibit 239.

Mr. Patterson: These are the only minutes of the duPont Trustees that have any relation to the Florida East Coast Railway, in the record.

Mr. Bourne: This is not the trust. Minutes of the duPont Trustees relating to transactions referred to in Exhibit 239.

The Court: What is that?.

Mr. Bourne: That is an offer made, in which the duPont Trustees were a——

Mr. Patterson: That is in there, in the minutes that you have in your hand.

Mr. Bourne: In other words, what you handed me are all of the minutes——

Mr. Patterson: All of the minutes of the duPont Trustees in regard to the Florida East Coast Railway reorganization.

Mr. Bourne: Or the other in Exhibit 239?

Mr. Patterson: I answered your question.

Mr. Bourne: I asked to have Mr. Ball prepared to state what the participation of the duPont Trust would have been in that transaction, and he undertook to refresh his recollection.

The Court: Well, I can not produce Mr. Ball but a subpoena would get him, I imagine.

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Mr. Patterson: The minutes will show everything that answers his question. He already asked that question to Mr. Ball on deposition.

Mr. Bourne: He did not answer it. Minutes of the board of directors' and executive committee of the St. Joe Paper Company containing any references to the Florida East Coast Railway reorganization?

Mr. Patterson: I was under the impression those were given to you. I have sent to the office for them this morning. I do not have them presently.

Mr. Bourne: Will you produce them this morning?

Mr. Patterson: If I can. They are only two short pages.

Mr. Bourne: Any annual reports of St. Joe Paper Company to its stockholders which contain any reference to Florida East Coast Railway or the Florida East Coast Railway reorganization.

Mr. Patterson: Any annual reports?

Mr. Bourne: Any annual reports.

Mr. Patterson: I wrote you that I did not have copies. I told you that I would have copies made and they are in the process of preparation.

Mr. Bourne: I protest, your Honor. I asked for these papers in November. I had a letter from Mr. Patterson, dated December 18th, promising to have them here, ending with this statement:

> "Since the trial will consume some time, you will have ample opportunity to examine them if the Court should rule you may examine them on demand."

To avoid any misunderstanding, I wrote Mr. Patterson on the 24th and listed the documents involved.

The Court: You want me to put him in jail? I do not understand what you want. He says he will get them as soon as he can get them copied. Can I help you more than that?

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Mr. Bourne: No, I do not believe you can, but I may ask your Honor's indulgence while I examine them.

The Court: I think I can help you out.

Mr. Bourne: I asked for an itemized statement of expenses incurred by St. Joe Paper Company.

Mr. Patterson: That is a statement that I do not have, and have not prepared, and I do not see that it has any bearing on this case.

Mr. Bourne: The bearing is this, your Honor: Your Honor asked yesterday why Mr. Claughton opposed the Commission's plan. We propose to argue the reasons as to why Mr. Ball opposes it, and the Interstate Commerce Commission's files contain—the file contains a letter written by a reputable gentleman, stating that the St. Joe Paper Company or the duPont interests or Mr. Ball—I do not remember the exact phraseology—paid expenses and fees of one or more of the public, so-called interest representatives. If it is a fact that the opposition to the plan was financed by the St. Joe Paper Company, I think I am entitled to show that.

The Court: Would you have to show they are very much interested in it, and want the railroad. It looks like the whole thing shows that.

Mr. Bourne: It goes beyond that. If the money of a charitable trust is taken to pay the fees and expenses of St. Lucie County or St. Johns or some other public interest community of Florida, I think I am entitled to show that.

The Court: I can not quite see how it would reach the merits of this plan any more than what he was trying to show on Monday. We are trying to find out about the merits of this Commission's plan.

Mr. Bourne: Your Honor has indicated that you are not, presently, prepared to agree that the Court's only responsibility is to determine whether or not there is material evidence to support the Commission's conclusions. If, as Mr. Patterson——

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The Court: I do not tie myself up that tight.

Mr. Bourne: I say, this is still a question of what the Court's duties and responsibilities are. What the scope of the task is here. Mr. Patterson is going to argue that there should be, in effect, a decision on the merits.

The Court: Here is my thought about paying the expenses of witnesses. That is often done, because nobody would be willing to——

Mr. Bourne: It is counsel fees, of a county or city in Florida which was represented before the Interstate Commerce Commission——

The Court: It is your idea that the Interstate Commerce Commission would have ruled differently if the lawyers and witnesses were paid by the St. Joe Paper Company?

Mr. Bourne: No, it isn't a matter of special import, your Honor. I do not contend that it is, but I think it is a significant indication of the lengths to which Mr. Ball is prepared to go, and I want to argue as to the reasons why he is willing to go to those lengths.

The Court: He is here, you say, or going to be here. Can't you ask him?

Mr. Bourne: I asked him the question as to whether those expenses——

The Court: Do I understand you to say it is a letter that you want?

Mr. Bourne: No, an itemized statement of St. Joe Paper Company.

The Court: You can subpoena witnesses and make them tell, but, to make them get up a statement, I never heard tell of that.

Mr. Bourne: They are a party to the case here. They have records. Should I issue a subpoena to try——

The Court: Does it matter to me whether they paid fifty dollars or five thousand dollars?

Mr. Bourne: Well, I will have to——

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The Court: I think you could prove that in a general way if it is important, but I do not think that they would have to go over the books and dig out items of expense.

Mr. Bourne: It is a great deal simpler from their point of view, than for me to subpoena anybody that might have knowledge on the subject.

The Court: You see where it is going? Back to Monday. They want to work around on what the Coast Line has done and all of that. I said it was irrelevant.

Mr. Bourne: Your Honor, there is just this difference. When they asked for the production of data, when the depositions of Mr. Davis and Mr. Butler were taken, we gave them every single thing they asked for.

The Court: And, I ruled it out.

Mr. Bourne: And you ruled it out. Then we took Mr. Ball's deposition, they blocked us and we were completely blocked by two things. One was, first of all, the illness of Judge Strum, and the lack of any judge here to whom we could apply, and then as a practical matter, by the statement of Mr. Patterson, in his letters that the material would be on hand here.

The Court: Well, you have just gotten me in a place where I can not think what you are trying to do amounts to anything. I do not want to go to any great length in helping you to get something up that I would later rule out. That is my practical view. I want everybody to have an opportunity to show the truth about everything that is material. That is my duty, and that also will be my pleasure. I do not see how the items of expense during a period of litigation here that has gone on eight years now, is material.

Mr. Bourne: I will limit the request to the period from January 1, 1945, which is about the time that the Atlantic Coast Line Railroad came into the picture.

The Court: Well, that is four years. What is it you want me to do, precisely?

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Mr. Bourne: To direct the St. Joe Paper Company to produce an itemized statement of their expenses in this proceeding since January 1, 1945.

The Court: I do not think you have any right to get it in that way, if they object.

Mr. Bourne: All right, sir. The next is the statement of policy which is referred to in Mr. Ball's deposition at page 141.

Mr. Patterson: That is already in evidence. That was put in evidence at the hearings in West Palm Beach.

Mr. Bourne: That is satisfactory.

The next is a list of the stockholders of the St. Joe Paper Company.

Mr. Patterson: I have that here.

Mr. Bourne: May I have it?

Mr. Patterson: As soon as I get a ruling on it. Go ahead. What else do you want?

Mr. Bourne: That is all.

Mr. Patterson: That is all you want?

Mr. Bourne: That is all, of course, reserving my right to further request production of matters.

Mr. Patterson: Your Honor has ruled that the negotiations and transactions between Mr. Davis and Mr. Butler and the Safe Deposit and Trust Company and all of the testimony that we have produced from their witnesses is irrelevant here and has nothing to do with the merits of the plan. Mr. Bourne has not stated the purpose for which this evidence is requested, and I ask him to make a statement as to what the purpose is for which he wants it. He—If he is willing to do that, I think we will save time.

Mr. Bourne: Are you referring to the stockholders?

Mr. Patterson: All of it. They were produced.

Mr. Bourne: They were here a minute ago. Will you produce them?

Mr. Patterson: I will produce them if you will state the purpose for which you wish to offer this testimony or these documents.

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The Court: Gentlemen, you are taking up a lot of time and I am getting into a place where I think I should get it straightened out. I think you wanted them produced for you so you could see them?

Mr. Bourne: Yes, that is right.

The Court: I ruled you could have them, but they are not available in his pocket, of course.

Mr. Patterson: Does your Honor rule I have to show them to him?

The Court: Yes, show them to him. Not to put in his file or carry off with him, but he may look at them in open court.

Mr. Milam: May your Honor please, in discussing the petition for prepayment of the first mortgage, the Court mentioned something about Mr. Barringer's brief. Does the Court have a copy of the brief I filed in the matter also?

The Court: I have not seen it.

Mr. Milam: May I hand a copy to the Court, which touches on the matter mentioned? It was filed.

The Court: All right.

Mr. Crossman: Can I go ahead with Mr. Stott?

The Court: Mr. Bourne can not do two things at once.

Mr. Bourne: I do not mind. If there is no objection, I can look them over now, or at recess.

The Court: Go ahead with Mr. Stott, then.

Mr. William J. Stott, having been previously produced and first duly sworn as a witness on behalf of the Five Per Cent Committee, was recalled to the witness stand, and further testified as follows:

Further direct examination by Mr. Crossman:

Q. Mr. Stott, I want to get it straight so that there can be no mistake in view of the number of plans which have

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been filed here and discussed here, just what you mean when you speak in your exhibits, or in your testimony, of the "Atlantic Coast Line Plan"? A. I am speaking of the latest Interstate Commerce Commission plan providing for unification of the Florida East Coast Railway with the Atlantic Coast Line Railroad.

Q. I believe that in the beginning of your testimony you did discuss the prior Atlantic Coast Line plan, so there would be that exception to what you have said? A. That is possible, that I did mention the prior plan. I am really speaking about the Interstate Commerce Commission plan all the time.

Q. Except where the context clearly indicates the contrary? A. That is correct.

Q. I think that I was guilty of referring in these comparisons, to the Interstate Commerce Commission plan of January, 1945. What I really meant was the Examiner's plan which was slightly different, which came out as a result of objections to that Commission's plan. A. Yes, the Examiner's plan is the latest proposal providing for independent reorganization. I think that came out in the middle of '46.

Q. Whatever time it came out, it is that latest Examiners' plan which you are comparing with the present Commission's plan, as I understand it. A. That is right.

Q. Mr. Stott, do you know of any valuation of these two packages by statistical services? A. Yes, Moody's Investors, which is one of the largest statistical services, have made a valuation of the package under the Interstate Commerce Commission plan, and Standard Statistics, at the time of the old Interstate Commerce Commission's plan providing for independent reorganization, made an estimate of the package value under that plan.

Q. Have you copies of those? A. I have only two.

Q. What is the date of the Moody's evaluation? A. The Moody's evaluation of the Interstate Commerce Commission plan is dated June 2, 1947. At that time the Atlantic Coast

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Line common was selling at 47 a share. It is selling at a little below that now, so there isn't a great deal of difference in the evaluation of railroad securities.

At that time Moodys came out with a package value of $720 for the Interstate Commerce Commission package of cash and securities, exclusive of any cash under the A and B lien orders, or any excess cash in the Florida East Coast Railway. In other words, that $720.00 figure compares with the Commission figure or value of $686.00.

Q. Well, does the evaluation of the securities to be issued apply the $61.97? A. That is correct.

Mr. Crossman: I would like to offer this in evidence. I haven't any copies.

Mr. Patterson: If your Honor please, I do not see any use encumbering up the record with this. I allowed him to state the substance of the evaluation and I think that is all that is necessary.

The Court: I think so, too. That is the opinion of somebody that I do not happen to know.

Mr. Patterson: I allowed him to state it because it is a well known house, but I do not think that we want to accept a printed statement of that kind in evidence without a right to examine the man that wrote it.

The Court: I just do not see what it has to do with the case. That is, that some financial expert thinks so and so.

Mr. Crossman: I withdraw the offer.

By Mr. Crossman:

Q. Will you state what the securities were valued at? A. The First Mortgage, three and a half, of the Coast Line, was valued at 95.

The income, four and a half, 85.

Preferred at 65;

And common at 47.

Mr. Milam: Preferred at what?

A. 65.

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Q. Common at what? A. 47.

Mr. Milam: Thank you.

By Mr. Crossman:

Q. What did the Standard Statistics, what was the date of the Standard Statistics evaluation of the Florida East Coast package? A. March 8, 1945.

Q. What value did they estimate? A. They estimated a value between 85 and 95 for the Florida East Coast Railway income. And a value of between 20 and 25 for the Florida East Coast common.

Q. What was the date, or what was the total value? A. Well, shall I use the price of 90 as an average price?

Q. Yes, you can use the average price. A. Using 90 for the incomes, and 25 for the common, that is a valuation of $517.00.

Q. From your familiarity with prices of railroad securities, would you say that the railway income bonds at the time of this report were selling at a substantially higher level than as of today? A. Yes, in 1945 income bonds were selling at a good deal higher price than they are today. The average income bond was probably 10 points higher.

Q. Have you prepared an exhibit entitled "Current Annual Income on the ACL package of securities"? A. Yes, sir, I have.

Q. Have you a copy? A. I have only one copy of each.

Mr. Crossman: I offer it in evidence.

. . . The instrument last above referred to was received and filed in evidence and marked Five Per Cent Committee's Exhibit No. 5.

By Mr. Crossman:

Q. Have you prepared an exhibit entitled "Estimated Annual Income under Current Conditions of the F. E. C. Package of Securities"? A. Yes, sir.

Mr. Crossman: I offer that in evidence.

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Mr. Patterson: Isn't this in the Commission's report? A. No.

Q. I thought it was in the third report? A. No. The Atlantic Coast Line one may be— The Florida East Coast Line one.

. . . The instrument last above referred to was received and filed in evidence and marked Five Per Cent Committee's Exhibit No. 6.

By Mr. Crossman:

Q. In preparing these exhibits, what assumptions have you made? A. In the case of the annual income of the Atlantic Coast Line Railroad securities, no assumptions are necessary. You can use the dividend rates and the stock. The Coast Line is now paying a four dollar dividend. In the case of the Florida East Coast Railway, it is necessary, of course, to make assumptions. The dividend policy of the Florida East Coast Railway would depend on the action of the Board of Directors, but in order to try and arrive at a reasonable figure, I have assumed that the Florida East Coast Railway would pay fifty per cent of its earnings as dividends.

Q. What earnings have you used? A. I am speaking of the earnings of $3.20 a share in 1948.

Q. 1948 estimated earnings? You left out of the Atlantic Coast Line Exhibit No. 5 any reference to cash. A. Yes, there is no provision there for any income that would be received on the cash payments to be made by the Coast Line.

Q. What does Exhibit 5 show as the annual return under the Atlantic Coast Line package? A. It shows annual return of $31.27.

Q. What does Exhibit No. 6 show as to annual return under the Florida East Coast package? A. It shows annual income of $27.45.

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The Court: Plus an income on the 91 dollars? A. No, sir, the old plan, or, the only plan that pays the ninety-one dollars would be the Atlantic Coast Line plan which provides an income on the securities of $31.37.

The Court: Under the other plan there would be no cash payments made? A. Under the other plan there would be no cash payments made.

By Mr. Crossman:

Q. If you make an allowance—withdraw that. Will you please state what allowance you think might be made for the cash payment under the Atlantic Coast Line plan? I mean, the cash payment of $91.67? A. Well, it would all depend what investment they wanted to put the money in. You certainly could invest it in a good grade bond with three and a half return and that would add $3.20 a year to your annual income, making it $34.47 a year. If, on the other hand, you wished to invest your $91.67 cash payment in some other railroad stock, let us say even Atlantic Coast Line, you could buy two additional shares of Coast Line common which would give you a package somewhat similar, as to the percentage of stock, to the Examiners' plan package, and your current annual income would be increased by eight dollars a year. It would give you an income of $39.27 a year.

Mr. Crossman: The witness is tendered for cross examination.

Cross examination by Mr. Milam:

Q. Will you please turn to your Exhibit No. 2. A. Which exhibit is that, sir?

Q. "Coverage and Earnings for the Securities that would be issued by the F. E. C. under the Various Estimated Levels of Normal Earnings." A. Yes, sir.

Q. You used approximate charges of one million dollars, irrespective of income before charges and income taxes? A. Well, in every case, the income——

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Q. Did you do so? A. Pardon?

Q. Did you do so? A. Yes, sir, I did.

Q. If, in the last column you used a million five hundred thousand dollars approximate charges, it would mean that $190,000 would be saved in taxes and would come to the stockholders, would it not? A. Yes——

Mr. Crossman: I object to this question. It is an assumption which has no basis. It is quite clear what the charges are under this plan. The witness has used them. I think it is ridiculous.

Mr. Milam: No, it is not, at all, your Honor. We discussed what the charges would be in the situation, and, having earnings of three million dollars, it is perfectly logical the charges would be more than if the earnings were a million and a half. That is, the per cent on dividends that would go to the security holders would be more, on the larger earnings.

Mr. Crossman: Your Honor, the Interstate Commerce Commission figures the charges at one million dollars. All we have attempted to do is to compare the two. I see no purpose in talking about some——

The Court: Well, he put a hypothetical question. Whether he is entitled to put it, I do not know.

The Witness: Yes, sir.

By Mr. Milam:

Q. Then, the more the charges paid out, the less taxes there are to pay, of course. A. On equal amounts. On equal amounts that are available for charges.

Q. Would you mind telling the Court where income, of a railroad such as this, had been proven to be three million dollars, what the approximate charges would normally be? A. If the pre-tax earnings of the Florida East Coast Railway were shown to be about three million dollars, I just couldn't tell what the Interstate Commerce Commission would do.

Q. I am not saying what the Interstate Commerce Commission would do. I am saying what it would normally be.

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You are here as an expert. A. You mean, normal coverage?

Q. Yes. A. I would say that in these days two and a half to three times coverage would be normal.

Q. Would you mind stating, as an expert, what in your opinion a well secured first mortgage bond of this railroad property, four per cent, with adequate coverage, would bring in the market? A. Well, I would have to know what size of an issue you are speaking about.

Q. Let us say fifteen million dollars? A. Well, then I would have to know the level of normal earning power of the railroad. I am using the Interstate Commerce Commission figures. I know of no other way to estimate——

Q. Will you assume an estimate of two million eight hundred and fifty thousand earnings. Does that answer the question? A. You mean for the purposes of this question?

Q. Yes, sir. A. Fifteen million dollar issue, four per cent?

Q. That is right. A. (Calculating on slide rule.) For the purpose of this calculation, I will say, yes, seven hundred thousand dollars charges, which would be six hundred thousand dollars charges on a fifteen million dollar issue and one hundred thousand dollars charges on equipment. Is that agreeable?

Q. Very well, that is agreeable. A. I think such an issue would probably sell about par.

Q. Very well. A. You realize, I think, that the charges that you have given me to use, result in a higher income tax than the million dollars of charges I have been using right along.

Q. I understand, sir. Then, let us follow that out. Then, if income bonds were issued on top of fifteen million dollars first mortgage bonds, the tax would become less in proportion to the charges of interest on income bonds? A. That is correct.

Q. Then you will say to the Court that the compilation depends upon the net earnings, primarily? A. Right.

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Q. And the more the charges, the less the income tax? A. That is correct.

Q. You have named the members of your Committee, and their financial positions. What did the Committee do about the one thousand dollar cash offer of bonds, per bond, of Mr. Ball? A. The Committee did not believe that that was a firm offer.

Q. Had it been a firm offer— A. They would have accepted it.

Q. Is it not a fact that the Committee that you represent sold a large quantity of the bonds that it held for sixteen and one-half? A. That is right.

Q. Do you know that those bonds, today, are selling for approximately 59 or 60? A. I do.

Q. Do you know that they have gone as high as 90? A. I do.

Q. Now, it is the judgment of your Committee, or, it was the judgment of your Committee to sell out these bonds at sixteen and one-half, is that correct? A. That is correct.

Q. It is the self-same Committee now——?

The Court: When was that, please.

A. That was in 1942.

By Mr. Milam:

Q. That self-same Committee now would recommend to their security holders to sell out the rest to the Atlantic Coast Line Railroad under that plan? A. They favor the Atlantic Coast Line plan.

Q. Yes. It is the same Committee that favors the ACL plan, that sold out some millions of dollars of bonds at sixteen and one-half? A. That is correct. There were reasons for selling out those bonds.

Mr. Milam: That is all.

Mr. Crossman: Let the witness complete his answer.

Mr. Milam: He can continue as long as he wishes.

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A. The reasons for the sale of the bonds by the Committee —in the first place, I was not identified with the Committee at the time the bonds were sold. The decision to sell the bonds was based on a number of factors.

Mr. Patterson: If your Honor please, I do not want to cause too much trouble, but the witness says he was not connected with the Committee, and I do not think he should state the reasons of the Committee.

The Court: What do you say about that?

Mr. Crossman: The witness is familiar, in his duties, as acting secretary, with the reason. He has examined the records of the Committee, I think it probably is hearsay, but I thought there was a certain amount of latitude——

The Court: There has been too much latitude, in my opinion.

Mr. Crossman: I think he has been questioned as to why they sold them. It is his belief.

The Court: If you know why they sold them, go ahead.

A. They sold them, in the first place, because the institutions did not like to hold bankrupt bonds. The authorities were always pursuing them to sell.

In the second place, they felt that other reorganization securities selling around sixteen and one-half were a good deal more attractive than Florida East Coast bonds. As a matter of fact, that has developed to be the case. Almost any other reorganization rail bonds selling at sixteen and one-half in April—in August, 1942, every one that I know of has gone up far more than the Florida East Coast Refunding Bonds.

By Mr. Milam:

Q. Mr. Stott, I hand you brief on behalf of the Deposit Committee for the First and Refunding Mortgage Five Per Cent bonds, dated July 14, 1944, on page 16, in large capitals, the heading, "Reorganized Company's total capitalization should be approximately fifty-seven million dollars."

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Do you identify that document as coming from your Committee? A. Yes, sir.

Q. Was that statement made? A. Yes, sir.

Mr. Milam: No further questions.

The Court: I want to ask one, please. You stated, yesterday, the amount of bonds that the Committee now represents. What was that?

A. $572,400.

Q. The total number of holders? A. 260.

Q. Do you know the number of bonds they represented when they instituted this present proceedings in 1941?

Mr. Patterson: That is in the record, if your Honor please.

The Court: That is in the record?

Mr. Patterson: I can state that.

Mr. Crossman: Could I state an approximation? I was counsel for the Committee at the time.

The Court: Well, here is the witness. I just want the information.

Mr. Crossman: I believe it was over two thirds of the outstanding issue.

Mr. Milam: Something over thirty million.

Mr. Crossman: I believe so.

Mr. Milam: That is our recollection.

A. Do you want the maximum amount of bonds on deposit with the Committee?

The Court: Well, it is the same thing.

Mr. Patterson: Mr. Anderson testified——

The Court: Wait a minute.

Mr. Patterson: Pardon me.

The Court: I do not want the exact amount of dollars; I want an idea.

A. I think thirty million would be pretty close to the correct figure.

The Court: Thirty million?

A. Yes, sir. I am sorry I do not have that.

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Mr. Milam: We will accept Mr. Crossman's statement on that.

By Mr. Thomson:

Q. I have a few questions on behalf of the Trustees for these bonds. The two trustees—the corporate trustee, and also the individual trustee. Mr. Stott, I understand you are the acting secretary of this Committee? A. That is right.

Q. Is there any particular reason why you are the acting secretary rather than the secretary? A. I was made acting secretary when the secretary left during the war. The idea, or feeling, then, was that he would be back, and he did not come back, and my title has never been changed.

Q. But, to all intents and purposes, you are the secretary of this Committee? A. Yes.

Q. You have the authority to speak for the Committee? A. Yes.

Q. You have come down to Jacksonville in order to state to this Court that you are in favor of the proposed plan now up for consideration? A. Yes.

Q. And you have been secretary or acting secretary of this Committee since '43, as I understand your testimony. Is that correct? A. Yes, sir.

Q. Have you ever, or has any member of the Committee ever consulted with, in the first place, the Bankers Trust Company as trustee for these bonds, starting, we will say, in 1943, and running through to the time when the Bankers Trust—? A. Not that I know of. I am not familiar with that.

Q. Have you or have any members of your Committee ever consulted with the Chemical Bank and Trust Company when they were successor trustee? A. Not that I know of.

Q. Have you or any member of this Committee ever consulted with the present trustee, the Bank of Manhattan, since its appointment in September? A. No, sir.

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Q. Have you, or has any member of your Committee ever examined the railroad's physical properties here in Jacksonville and running down to Miami? A. I have not. The members of the Committee have.

Q. How long ago was that? A. Some years ago.

Q. Several years ago? A. Yes.

Q. You are familiar with railroad reorganizations? That is part of your job as a statistician, or, rather, that is your job as secretary of the Committee; is that right? A. Yes, sir.

Q. What methods of valuation can be used in reaching an opinion on the value of a railroad? In your opinion? A. I think earning power is by far the most important situation.

Q. Have you ever considered the difference between what we call a closed reorganization where the owners of the equity of the railroad gets the railroad and the type of reorganization which is now before this Court, where the owners of the equity in the railroad were being compelled to sell it to a third party? To a complete stranger? A. I don't understand that question clearly.

Q. Do you consider that there can be two different types of reorganization? I mean, has this ever been part of a situation in reaching the conclusion that this plan is favorable to the bondholders? The difference between a closed reorganization and this type of reorganization? A. Do you mean from a tax standpoint—?

Q. From any point of view? From a point of view of justice, equity and fairness? A. You mean, the legal question involved?

Q. I am not asking for a legal question, particularly, because I do not think fairness is a legal question. I think fairness is something a layman can put his mind to. Have you considered that the valuation of a railroad, so far as a closed reorganization is concerned, could possibly, and should possibly be different from the valuation of a rail-

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road when the railroad is being sold to a third party? A stranger? A. Yes, sir.

Q. And have you come to the conclusion that even where the railroad is being sold to a stranger, that the capitalization of estimated future earnings is the proper method of valuation? A. I think that the problem involved here is a question of which package of securities would be more valuable. I think that is the only basis on which we can estimate it.

Q. Has your bank ever owned an apartment house? A. No, sir.

Q. Either as trustee, or in some other capacity? A. No, sir.

Q. Having gotten it out on a defaulted mortgage, or something? A. Well, I am not in the real estate. I do not believe we have ever been——

Q. Would you consider it appropriate and fair, if your bank did own an apartment house in the depression, when the apartment house, we will say, is ten per cent rented, to value that apartment house on the basis of its earnings, and then capitalize its sale to an outsider on that basis?

Mr. Crossman: I think that is irrelevant. We do not own an apartment house.

The Court: Yes, but we are under Section 77.

Mr. Thomson: Yes. It is a question of valuation, assessed valuation.

The Court: That goes to the valuation of the road.

By Mr. Thomson:

Q. You say you have considered these two methods of value. I mean, I may have misunderstood you. You say the valuation is the capitalization of the estimated future earnings, and that is proper valuation even in reorganization, where the assets of the debtor are turned over to an outsider? A. I think it is the only way that you could value the two packages, today. I mean, looking at them independently.

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Q. Did you not believe that anything could be done in the nature of a judicial sale, particularly where the majority of the bondholders whom I represent, and whom you represent in part, would——

Mr. Bourne: I object to that. That is purely a legal question.

The Court: It is not helpful to me. I think I shall hold it irrelevant.

Mr. Thomson: All right, we will let it go at that.

Mr. Bourne: May I ask a question?

The Court: Yes.

By Mr. Bourne:

Q. So far as you know, Mr. Stott, has either of the mortgage trustees, who are represented by Mr. Thomson, communicated with you and your counsel, or any member of the Committee since they were appointed as Trustees? A. Not so far as I know.

Mr. Bourne: That is all.

By Mr. Patterson:

Q. Mr. Stott, may I refer to your Exhibit No. 3? As to the F. E. C. securities, and estimated valuation? A. Yes, sir.

Q. I understand that your first column, that is, your first estimate——

Mr. Crossman: That is Exhibit No. 4.

Mr. Patterson: I beg your pardon, it is No. 4. Exhibit No. 4.

By Mr. Patterson:

Q. Your first estimated value is based on a million and a half, earnings? A. Yes, sir. Generally. It is generous. I think that is a generous estimate of a million and a half earnings.

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Q. You estimated F. E. C. income bonds, under that, at $337.00; and the stock at $113.00, or a total of $450.00? A. That is right.

Q. And what would that value amount to? The total? A. About twenty million dollars, I think.

Q. About twenty million dollars? A. Yes, sir.

Q. And on $1,800,000 earnings, you estimate the value of the income bonds at ninety, and the common stock at forty? Giving you a total value of bonds of $585? A. Yes.

Q. What would that value of the railroad be on that basis? A. (Calculating on slide rule.)

Q. You can use approximate figures? A. About twenty-six—twenty-five or twenty-six million dollars.

Q. Twenty-five or twenty-six million dollars? A. Yes.

Q. Now, I do not recall, and I ask you to refresh your memory; did you not make an estimate of values on a higher income basis yesterday? A. That is right. I put these earnings on Mr. Gordon's figures, and testified yesterday.

Q. And what was the value of bonds and stocks under that. I do not remember that. A. As I remember it was 675.

Q. And you were taking the bonds at par? A. At par.

Q. And the stocks? A. I took the bonds at 95, and the stock at 55. 675.

Q. You took the bonds at 95, or, $2,850,000 earnings? A. Yes, sir.

Q. And you reached a total of how much? A. $675.

Q. Now, what would that produce for the bondholders on your valuation? A. Roughly, thirty million dollars.

Q. So we get three bases of valuations, twenty, twenty-six and thirty million dollars. Now, do you know how many mortgages are on the railroad today? A. On the Florida East Coast?

Q. Yes. A. Yes, I do. The first mortgage is twelve million dollars. That is not in default. The first and refunding issue is forty-five million.

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Q. And I believe you said a while ago that the First and Refundings were selling at 57, or 8. What would be the value of those on the market today? A. (Calculating with slide rule.) About twenty-five or twenty-six million dollars.

Q. About twenty-five or twenty-six million dollars on the market today. And, are you familiar with the fact that there have been only four coupons paid on that in eighteen years? A. I am.

Q. And the last coupon was paid in 1945. You are familiar with that fact? A. Yes, I am. I believe it was paid in '47.

Q. There may have been one paid in '47. About—I thought the last were paid in '45. I won't be sure. It is not material. Now, then, you have a first mortgage, which I assume that you admit is worth par Twelve million? A. Well, there's twelve million in cash in the company to retire that mortgage. Do not forget about that.

Q. Well, even without that, do you know what the first mortgage bonds are selling for today? A. 101 or 102.

Q. So, that is slightly above twelve million dollars, isn't it? So, I understand if we are going to use the stock market as a basis of value, according to that, it would be thirty-seven million of value in the securities on the market today. A. There are twelve million dollars in cash in the company, available to retire that first mortgage; available to retire those first mortgage bonds. That first mortgage issue, in these calculations, I have assumed is retired and out of the way. If there were twelve million first mortgage bonds on this property, the income bonds and stock would sell for nothing like the prices I have indicated.

Q. I understand that. What I am getting at, stock market prices, which is all you have been dealing with, as I understand. A. Yes.

Q. You did not testify as to the value of the property? A. No, sir, I testified to what I believed they would sell for.

Q. You testified to the sale value of two new securities; two relatively two new groups of securities? A. Yes, sir.

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Q. I am asking you, what is the value of this security today, and you said 101, for the first mortgage and 57 or 58 for the second mortgage, which leaves us a total of approximately thirty-seven to eight million dollars. A. Well, I think, of course, there is no basis at all for the use of those figures.

Q. I did not ask you that. I just asked you to give me the figures. That is all I want. Now, we will come to the cash. Do you know how much cash the Receivers have? A. Approximately, yes.

Q. How much do you figure? A. Well——

Q. Approximately? A. Twenty million dollars.

Q. All right. Then, under your estimate of the value of these securities on that, you would estimate the entire new issue of both income bonds, and common stock at twenty million dollars when the railroad has twenty million dollars cash on hand? A. That is completely, that cash is completely committed under the terms of the Interstate Commerce Commission plan. As a matter of fact, the trustees recently submitted an exhibit indicating that there was a cash deficit on the Florida East Coast Railway.

Q. But, I say, your value is exactly equal to the cash, is it not? Your total value, based on a million and a half, is equal to the cash, without regard to the properties of the railway? In amount? A. Equal in amount. But, the relationship is higher——

Q. Well——

Mr. Crossman: Let him finish, Mr. Patterson. You keep interrupting him.

Mr. Patterson: I did not interrupt while you were examining.

Mr. Crossman: I submit the witness is entitled to finish the answer.

The Court: Let him answer and he can explain if he misunderstood.

Mr. Patterson: I have no objection to his explaining.

A. I would say this cash in the Florida East Coast Rail-

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way is completely committed and you can not consider that that twenty million dollars is the same as my valuation of twenty million dollars for the securities.

By Mr. Patterson:

Q. No. It is committed for two purposes? A. That is right.

Q. To pay off the first mortgage? A. That is right.

Q. And, make improvements on the railroad? A. That is correct.

Q. You have not taken that into consideration in your stock market evaluation, of course? A. Indeed, I have. The Interstate Commerce Commission has taken that into consideration in those earnings estimated at a million five and so stated in its plan.

Q. Now, so far as the Committee is concerned, how long did you say you had been acting secretary for the Committee? A. April, 1943.

Q. You were such secretary when the Coast Line plan was presented to the Commission, were you not, in 1945? A. Yes, I was.

Q. Did your Committee approve the original plan of the Coast Line that was submitted in 1945? A. They did.

Q. That plan was different from the plan of the Commission, was it not? A. Yes, sir.

Q. It was considerably less, was it not? A. It was less, yes. It was still better in the Committee's opinion than the independent plan.

Q. Yes, sir. And, as I understood you yesterday, you referred to some liens, which you said would make it better still? A. That is correct.

Q. Did your Committee have anything to do with getting those liens? A. That, I do not know.

Q. You have no record of any—? A. Well, I am under the impression that we did, but I am not sure.

Q. Would you say in what way? What your impression is based on? A. Well, my impression is that our counsel wrote Florida counsel and suggested that we try to get a lien on the property.

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Q. Well, I do not want to involve you in any discussion, but, that did not take place in the Court, as the Court records will show. I did not mean to try to trap you. I was just asking for information. Now, these four gentlemen who constitute the Committee, are connected with four institutions, Mr. Anderson with Morgan & Company, Mr. Sturgis, the First National Bank, Mr. Borden, City National, and the fourth is who? Mr. Hagerty of— A. Metropolitan.

Q. There were two or three other members of the Committee, originally, were there not? A. Yes, there were.

Q. Do you remember who they were? A. I don't remember all of them. I know Mr. Cutler was one of them.

Q. Of the Safe Deposit? A. Of the Safe Deposit, at one time. Not, since I have been on the Committee. And, there were other members, but I can not recall.

Q. Wasn't there a member from the Northwestern Mutual? A. Yes, Mr. Walker.

Q. Isn't it a fact, or do you know it to be a fact that every one of these institutions sold every bond that they had, in 1942? A. I don't think that is a fact.

Q. You don't think that is a fact? A. No, sir. It is my impression that one of the institutions did not sell any of its bonds in 1942.

Q. You are correct. The Safe Deposit Trust. Well, the others did? A. Yes, I believe they did.

Q. And since 1942, no member of this Committee has owned any of the bonds—no institution, I should say; none of the institutions? A. I have not checked recently. That was true, a few months ago.

Q. Now, with reference to the preferred stock valuation you have in your estimate of Coast Line prices. Is this estimate of yours, this last one, on your Coast Line prices —no, you did not give an estimate of the Coast Line stocks, did you? A. Not of my own, no, sir.

Q. You merely assumed the Commission's? A. I assumed that that package value was conservative package value, which I believe it is.

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Q. Well, let us refer to one item, then: ACL preferred stock is valued at seventy, is it not? A. That is right.

Q. That is a four dollar stock? A. That is right.

Q. Do you think that is a fair valuation for that? A. I think that is slightly on the high side. On the other hand, I think the first mortgage Coast Line bonds valued at 90 are distinctly on the low side and income bonds at 70 on the low side.

Q. The preferred stock of the Southern Railway, are you familiar with that? A. In a general way.

Q. What dividend rate does it pay? A. Five dollars non-cumulative non-participating.

Q. What is that selling at today? A. I don't know.

Q. I thought that you were familiar with those? You had all of the other figures here. A. (No response.)

Q. I will ask you this: I believe you stated that the Committee met on December 30th? A. Yes, sir.

Q. You had prepared these exhibits for the meeting? A. Oh, yes, indeed, I had.

Q. Had you submitted these exhibits to the Committee at the meeting? A. Yes, sir.

Q. Had they previously examined them? A. Oh, indeed. They had been sent out to them before that.

Q. As a matter of fact, your counsel, for the Committee approved the plan in Washington, did he not? A. I don't know.

Q. Or recommended it? A. Yes.

Q. Mr. Fitzgibbons, I mean.

Mr. Crossman: I did it.

Mr. Patterson: That is all. Wait a minute.

By Mr. Patterson:

Q. You referred to this first mortgage 3½. Have you assumed that was a first mortgage on all properties of the East Coast and security both principal and interest? A. Oh, indeed, yes.

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Q. Do you know that the plan says it is secured only as to interest? A. I was not aware of that.

Q. That would make some difference in your evaluation, would it not? A. I don't know how it would. I don't see how it would make any difference.

Q. You don't think it is necessary to secure payment of interest on the mortgage? A. Well, it is a fixed interest bond.

Mr. Bourne: I do not want to interrupt, but I would like to have Mr. Patterson state where it is. Reference was made yesterday to the——

Mr. Patterson: It is in the order of the Commission.

Mr. Bourne: That is not my understanding of what the plan provides.

Mr. Patterson: The only definite reference there is made to it, is in the summary, which was prepared by the Commission.

Mr. Bourne: The plan itself provides the divisional first mortgage bonds shall be obligations of the Atlantic Coast Line Railroad Company. The bonds shall bear fixed interest at three and a half per annum, payable July 1st and January 1st, and shall be dated as required by the plan and mature twenty-five years after date of that issue.

A. Well, this is a first mortgage bond, as far as I can see.

Mr. Bourne: And the first mortgage bonds shall be secured by a first lien, subject to equipment trusts, on the Debtor's property and so forth.

Mr. Patterson: Here is the provision I am referring to.

I. Both on first mortgage and income mortgage, and so forth, and will be just obligations of the Coast Line Railroad.

Mr. Bourne: I want to state on the record, it is a summary, and we do not feel we are entitled to take advantage of any such statement as that in the summary.

The Court: It looks to me like the Commission is not exactly clear on what it was doing.

Mr. Bourne: The Commission does not get up the summary.

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The Court: Who does? They confirmed it. You can not tell me, when the Commission reports to this Court something, that isn't the Commission.

Mr. Bourne: I think, your Honor, what is binding upon the Commission is the Commission's report and order. The summary is not published. I do not know if it is certified.

The Court: Isn't that a part of this?

Mr. Bourne: No.

The Court: It was furnished to me as such.

Mr. Bourne: Is the summary on the face of the document?

The Court: Yes. The Clerk's record of that.

Mr. Bourne: Does it contain the summary?

The Court: It contains what he said. I thought it meant it was the obligation of the Coast Line to pay interest. And, secured, under the mortgage, the principal.

Mr. Bourne: It means, the obligation for principal and interest is secured by——

The Court: He thinks it does not make much difference for the purposes of his estimate.

Mr. Bourne: I do not want any question on that point. It is the first time it has ever been raised, on that point.

The Court: Mr. Claughton raised it yesterday.

Mr. Bourne: At this hearing, I mean.

Mr. Walton: I think Mr. Claughton raised it in the deposition.

Mr. Patterson: I have asked a question and he has answered it.

The Court: Yes, he has answered it. Are there any other questions now?

Mr. Walton: I have some, if your Honor please.

By Mr. Walton:

Q. In your Exhibit No. 5— A. Which one is that?

Q. —that is headed "Current Annual Income on the ACL Package of Securities." A. Right.

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Q. As I understand, there would be thirty-six thousand such packages? A. I don't recall.

Q. Well you are speaking of a package of securities here. How many of those packages would issue under the plan? A. Well, I wouldn't know. I don't know how many holders there are, or how many individual holders there are of the mortgage refunding bonds. This is for each thousand dollar bond. There would be forty-five thousand of those one thousand dollar bonds.

Q. Forty-five thousand packages? You have placed considerable emphasis on the cash which is said to be provided under the so-called Commission's plan. What would you compute such cash to be? A. The Coast Line pays, directly, $91.67.

Q. What is the total of that payment? A. I believe it is $4,125,000.00.

Q. How much more do you estimate would be paid? A. I think it is very difficult to estimate what the excess cash would be, to come out of the Florida East Coast Railway itself. I think it would be a large sum. But, I don't think anybody could estimate it at this minute. I think all of the—I think, as of the present time, in addition to that, there are these A and B orders which are about three million dollars.

Q. Now, take it the other way around. How much cash would the Coast Line receive under the so-called plan? A. The Coast Line would receive no cash under that, other than cash committed to pay off first mortgage bonds, cash, to carry out an A and B program, and a small amount for reorganization expenses and other items.

Q. Would it not receive $2,600,000 cash, of materials and supplies? A. It would receive, under the plan, that amount of materials and supplies.

Q. It would not receive that much cash? A. Well, to the extent that materials and supplies were less than that, it might take some cash to make it up. The Commission has set a figure of two million six as materials and supplies.

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Q. Say that again. A. I believe that the Commission has—(referring to paper)—that the Commission has set aside two million six as an amount of materials and supplies in the plan.

Q. You understand that it is provided that two million cash shall go to the Coast Line? A. That will not be cash, that will be materials and supplies. The only cash that would go to the Coast Line would be six hundred thousand for reorganization and five hundred for working capital.

Q. Do you have attached to your copy of the report, the so-called plan itself? A. No, sir.

Q. Would you examine this part of it headed "Cash Reserves", and see what it says about the Coast Line receiving cash? A. (Examining paper) Well, I think that what this says is that the materials and supplies aren't, if they aren't there, they will hold the cash in a separate fund to be used only for that purpose. In other words if there were only two millions of materia's and supplies, I think six hundred would be set aside in cash to bring that up.

Q. Well, assume that there were better than three million dollars in materials and supplies. How would that work? A. As a matter of fact. I don't feel in any position to argue here, the amount of excess cash that will be coming out of the Florida East Coast Railway at the time of reorganization. I think it will be a substantial amount, but I don't believe I am equipped to say what, or figure it out at this time.

Q. Your Committee feels that the bondholders of the Florida East Coast Railway should be required to supply the Coast Line with working capital? A. The Interstate Commerce Commission found——

Q. I am not asking what the Interstate Commission found. I am asking about what your Committee feels today. A. Our Committee feels that if the Florida East Coast Railway Company operated independently, it would need its own working capital and that would not go to the

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bondholders. But, some of this allowance is to go to the Coast Line. But, the approximate value would be, on the Coast Line, much better than under the Florida East Coast Independent plan than there is——

Q. Now, my question is that your Committee feels that the Florida East Coast Railway bondholders should be required to supply the Coast Line with working capital? A. Well, I suppose you you can look at it that way.

Q. Is your answer yes or no? A. Yes.

Mr. Walton: That is all.

Mr. Bourne: Can I ask a question?

The Court: Yes.

By Mr. Bourne

Q. Mr. Stott, in your opinion, is there any difference between the provisions of the plan in which there is an allowance of five hundred thousand dollars for working capital and a provision for cash payments by the Coast Line of four million one hundred thousand—is there any difference between those provisions, on the one hand, and a provision for cash payment of $3,625,000 by the Coast Line? A. Would you mind repeating that?

Q. Would the plan be any different if instead of providing for working capital of five hundred thousand dollars and a cash payment by the Atlantic Coast Line of $4,125,000, the plan merely provided for cash payment by the Atlantic Coast Line of $3,625,000 and no working capital? A. That is right.

Q. Do you think it is fair to say the plan requires the Florida East Coast bondholders to provide working capital for the Atlantic Coast Line Railroad under this plan? A. No, sir, I think under the circumstances, the Commission's plan is sufficiently favorable on the question about providing the Atlantic Coast Line Railroad with working capital.

Mr. Bourne: That is all

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The Court: Is that all?

Mr. Crossman I have no re-direct.

By the Court:

Q. I want to ask two questions, and you gentlemen may feel free to object to them if you think I should not ask them.

I want to ask, first, in your Committee's thinking about this matter, what do they understand becomes of the four million dollars, approximately, that will go for the bonds that the Trustees have? Who gets that? A. Those are the first mortgage bonds?

Q. I know they are, but they belong to the Trustees or somebody else right now. Four million dollars. A. Our feeling is that the twelve million set aside out of Florida East Coast Railway Company estate is simply to pay off those twelve million of bonds, and they will be retired with those funds.

Q. I know that, but who will get the money? The four million dollars? A. The first mortgage bondholders would get it.

Q. I know, but the Trustees have got the bonds now. A. Well, those will be just retired

Q. Given away. Nobody will get them? Or, the Coast Line will get them, or what? I do not understand what you are doing with that four million dollars. A. I think I must not understand your question.

Q. Well, maybe you don't know what else has happened. The Court here ordered the Trustees handling this estate, to take some of their cash and buy all they could buy, by way of retirement, it looks like; but, really they bought them. And, they have four million dollars, approximately, of these first mortgage bonds and they have got them now, and the plan says that the twelve million is to be set aside to pay these bonds. Eight million to go to the present bondholders outside of the company, and the four and the

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four million held by the company itself. This four million dollars is going to somebody, or else the Coast Line will keep it. I do not know which. But, I want to know what their idea is about it. A. Well, these bonds are placed behind the refunding mortgage bonds?

The Court: I do not know.

Mr. Bourne: I could answer your question on that.

The Court: There was a lien in the order of the Court, I think.

Mr. Bourne: Could I ask a question of the witness on that?

The Court: I am asking him what he knows, or what the Committee knows about it.

A. We feel the first mortgage issue is going to be completely retired out of cash in the hands of the road.

Q. I understand that, and I sympathize with you, but, who gets the road? Have they thought about that? A. I am sorry, I just don't understand; don't understand what you mean.

Q. I guess I am foolish, but I do not understand, either.

A. (No response.)

Mr. Bourne: Could I ask a question, your Honor?

The Court: Yes.

By Mr. Bourne:

Q. Is it your understanding that there will be paid out, a total of more than twelve million dollars in all, including the approximately four million dollars which has already been paid out? A. Oh, no. The twelve million dollars will pay off the whole issue.

Q. In other words, in computing the cash that the bondholders will get, there will be only a deduction of twelve million dollars? A. Oh, that is right. There won't be—just because four million of bonds have been retired——

The Court: They have not been retired, is the point, Mr. Witness.

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A. Just because four million of bonds have been bought in, there is no need to pay off sixteen million dollars of bonds, if that is the question.

The Court: No, that is not the question here at all. Only twelve million are to be paid off, and the question is who is going to get the revenue?

Mr. Crossman: May I ask a question?

The Court: Yes.

By Mr. Crossman:

Q. Isn't approximately four million of that money gone already? A. Four million of that money has been spent already for these bonds.

The Court: Yes. But there is a lien in that order, which, I suppose, will be put back in the estate. I do not understand that order.

A. I just don't understand it at all. I think it is quite plain in the plan that $12,000,000 comes out of the Florida East Coast and is to be used to pay off twelve million of bonds. My understanding——

Q. Then you run right head on into this question. Of these four million dollars of bonds, who owns them? On the face of that order, it looks like the bondholders of the refunding mortgage own them. That is what the lien appears to be. I do not know. A. Well, I think they do. As a matter of fact, I think in effect the refunding mortgage owns everything now. If you could only get the remaining eight million of bonds paid off, the refunding mortgage is a first mortgage on the whole thing. That is all there is. Only that refunding mortgage, and that is what we are thinking of.

Q. I would not have any trouble in my mind if this plan said, take eight million dollars and pay eight million dollars' worth of bonds. But, it says, take twelve million and pay twelve million bonds, and I do not know what will become of what is in the pot, if I may use a common expression.

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Mr. Bourne: Doesn't it work out, mathematically, Mr. Stott, just the same, whether you take eight million dollars out of the pot and pay off eight million dollars of publicly held bonds and the four million dollars of bonds are canceled? A. Yes.

Q. Or, whether you take twelve million out of the pot for eight million publicly owned and put four million back into the pot again? A. That is it. You are right.

The Court: Now, is that what the order of the Court means? That is what is troubling me? Of course, the Court can rephrase it if it wants, but I do not know what the Commission thought. The thought of the Commission.

Mr. Bourne: That has never been brought up, your Honor.

The Court: Well, it ought to.

Mr. Bourne: I am prepared to discuss it here. But I think as far as this witness is concerned, he has never treated that as being in the picture at all.

The Court: I asked him what the Commission, or rather, what the Committee thought about it. They had not thought about it.

A. We have not considered it.

Q. I want to ask one other question which may be unimportant here. If this Court approves this plan, it then goes from the Commission to the parties for acceptance or rejection. Are you prepared to say what your Committee would do in that event? A. It would also accept the plan.

By Mr. Crossman:

Q. I want to ask if we might clarify that. You will recommend to the bondholders whom you represent that they accept it? A. That is right.

The Court: I believe that is true. You could not act for yourself and not through the Committee. A. Yes.

Mr. Crossman: We do not own the bonds.

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The Court: All right, the next witness, please.

(Witness excused.)

Mr. Thomson: Your Honor, I think maybe this would be a good moment to put Mr. Aird on, representing the Trustees.

The Court: Bring him on now.

J. Bryson Aird, having been produced and first duly sworn as a witness on behalf of the Trustees of the First and Refunding Bonds, testified as follows:

Direct examination by Mr. Thomson:

Q. Mr. Aird, will you give your name and address? A. J. Bryson Aird, 829 Park Avenue, New York City.

Q. And your business? A. Vice-president, Bank of the Manhattan Company.

Q. A little more about that. You are vice-president of the Bank of the Manhattan Company, but what department are you connected with? A. I am in charge of their Trust Department.

Q. You are in charge of the Trust Department? A. Yes, sir.

Q. The Bank of the Manhattan Company is now the successor corporate trustee for the First and Refunding Fives, is that correct? A. That is correct.

Q. And what is your position in that connection? A. I am individual trustee of the First and Refunding Bonds.

Q. You are individual or personal trustee? A. Yes.

Q. When did the bank, and when did you, as an individual, accept the appointment? A. The bank accepted the appointment on December 8, 1948, and I was appointed by the bank on December 9, 1948.

Q. After your acceptance of this appointment, generally speaking, what did you do in order to carry out what you

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considered to be the obligations of the corporate trustee and of the individual trustee? A. Well, we thought it was our duty to find out, first, as best we could, what the sentiments of the bondholders were, having had it presented to us from various sources. So, I came to Jacksonville where we conferred with the bondholders and their counsel.

The Court: Several of them? When was that, please? A. That was December 16, 1948.

Q. Last December? A. Yes, sir.

By Mr. Thomson:

Q. Well, among other things, did you take a layman's look at the railroad? A. We traveled on the railroad from Jacksonville to Miami and took a layman's look at the property.

Q. And you got what a layman would get as a fair estimate of the physical situation with respect to the railway properties? A. I think so.

Q. Did you have any statistical figures prepared such as the last witness testified to? A. Yes, I had our statisticians make such a study and they came up with very much the same thing that the Morgan Company said about the stock. Pretty much the same figures.

Q. In other words, from a statistical point of view, from a New York Stock Exchange point of view, your statisticians reached the same conclusions, roughly speaking, as Mr. Stott? A. Yes. Roughly, on market value, but not much difference.

Q. You were in Court yesterday? A. Yes.

Q. You heard Mr. Stott both yesterday and today? A. Yes, sir.

Q. Can you state, briefly, both what the position of the corporate trustee and yourself, as the individual trustee, is, towards the plan which is now up for either approval or disapproval, at this hearing, and briefly what your reasons are for that position. A. Well, we would seek enforcement

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of the lien and securities of the First and Refunding Fives mortgage to the end that the bondholders obtained the equity. It has been presented to us, or represented to us, and we believe, or completely rely on or believe that a very great percentage of the bondholders wish that. We think that obviously the properties of this railroad, speaking in terms of price obtainable at a judicial sale, perhaps, or otherwise, is greatly in excess of the aggregate value of the Coast Line package.

Q. And for that reason, you are not in favor of the approval of this plan, is that correct? A. That is correct.

Mr. Thomson: That is all, your Honor. I do not think—I did not really intend to put Mr. Aird on at all, but as long as we have had testimony around here, I thought I should.

The Court: Yes. Is there any cross-examination?

Mr. Bourne: Yes, sir.

Cross examination by Mr. Bourne:

Q. I understood you to say, Mr. Aird, that your statisticians reached about the same results as J. P. Morgan & Company's, Mr. Stott? A. That is correct, sir.

Q. Your very last answer said something about speaking in terms of something or other, the aggregate was greater for the property than it would be for the Coast Line package. Could you just repeat that, or would you rather have the reporter read it? A. Well, I think I said the value was in excess—the value obtainable at perhaps a judicial sale or a voluntary sale, would be in excess of the aggregate value of the Coast Line plan. I meant to add that we therefore did not lay great emphasis on the values of various types of securities offered in the Coast Line plan.

Q. Well, is the basis for your position, then, that you assume that if there were a judicial sale, that the St. Joe Paper Company pays, either alone or with others, something in excess of the estimated market value of the Coast Line package? A. Well, I would not say what any one

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bidder would bid. I think a fair value would be bid, which would be in excess of the total Coast Line package. That is the opinion that is also represented to us by large numbers in amount of the——

Q. I would like to pursue that point. What do you mean when you undertake to say, now, what would be bid at a foreclosure sale if there were a foreclosure sale? How do you know what would be bid? A. I don't. I don't know what would be bid.

Q. That has been represented to you, has it? A. No, sir.

Q. What is the basis for your present opinion as to what would be bid in the event of a foreclosure sale? A. As I said in the beginning, just ordinary common observance of the physical properties of this railroad.

Q. Well, you cannot, by riding from Jacksonville to Miami and back, tell what would be done at a foreclosure sale, can you? A. No.

Q. How long have you been in the Trust Department of the Bank of the Manhattan Company? A. Nearly twenty years.

Q. Isn't it your experience that the prices bid at foreclosure sales actually, and almost invariably, are very much less than the market price of securities issued in connection with a reorganization plan? A. Well, that might be, yes.

Q. Well, in this instance, you say that your own people agree with Morgan & Company, but, at the same time, you say the price at the foreclosure sale would be higher? What is the reason? A. Yes, but, I say the bondholders put a price on their equity of their securities.

Q. When did they put it on, and how did they put it on? A. I cannot answer that.

Q. Well, you are testifying here as to the basis for your position as a Trustee? A. Yes, sir.

Q. Is that based on anything more than their arguments before the Court? A. Yes, I would say it is.

Q. What, in addition, did you have as a basis for a decision that has not been before the Court? A. Just as I said. The ordinary layman's approach to the railroad as a good property, and not as expressed in securities issued on a mathematical value.

Q. Did you reach your value on the basis of common sense, which was at variance with what your statistical calculations indicated? A. Yes, we think that the securities do not represent a value of the entire property itself. The equity. Furthermore, the Trustees' positions, naturally, would be—the Trustee is ordinarily persuaded, and should be, by a large majority of its bondholders. It is not up to the Trustee to question their business judgment if they prefer to have the equity position.

Q. Isn't that the basis of your being here. A. Yes, that is part of it.

Q. Did you communicate, at any time, with the Deposit Committee or its counsel? A. No, sir, I did not.

Q. Did you know of their existence? A. Yes, sir.

Q. Did you communicate at any time with the Coast Line? A. No, sir.

Q. Did you get information about the case? A. No, sir, I did not get into communication with them.

Q. Did you, or your counsel, communicate with me, in any way? A. I did.

Q. Did you talk to anybody at any time except opponents of the plan? A. I did not.

Mr. Bourne: That is all.

The Court: Are there any questions on cross-examination.

Mr. Crossman: I would like to ask a question on cross, if I may.

Cross examination by Mr. Crossman:

Q. Mr. Aird, how were you appointed trustee under this mortgage? A. By the majority of the bondholders.

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Q. Was the St. Joe Paper Company one of those bondholders who appointed you? A. Yes, sir, that is right.

Mr. Crossman: That is all.

Re-direct examination by Mr. Thomson:

Q. Mr. Aird, the last question Mr. Bourne asked you as to whether you talked with any opponents of this plan? A. Any but opponents of this plan.

Q. Any opponents of this plan, before coming down here?

Mr. Bourne: Anybody but opponents?

A. That is what I thought he said.

By Mr. Thomson:

Q. Prior to being in the courtroom yesterday afternoon, did it ever occur to you that any of the First and Refunding Fives were in favor of the plan? A. I had had no intimation of it of any sort.

Q. And, wherever you have inquired about this, what was the general information and the general statements made to you by the First and Refunding Five Bondholders? A. Very strong opposition.

Q. You knew there was a Committee, did you not? A. I did, yes.

Q. What, prior to the testimony today, did you consider to be the position of that Committee in this proceeding? A. I did not have any information whatsoever. —as to its position.

Q. Did you have any idea how many bonds they represented? A. Not the slightest.

Mr. Thomson: That is all.

The Court: You may go down.

(Witness excused.)

The Court: I think we had better get through with Mr. Conn, as he was in order yesterday. Before we start

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on him, it is nearly recess time. Let us take a ten minute recess.

. . . An informal recess was had, and thereafter the following further proceedings were had:

Mr. Fred Conn, having been produced and first duly sworn as a witness on behalf of himself and others, testified as follows:

Direct examination by Mr. MacFarlane:

Q. Please state your name? A. F. K. Conn.

Q. Where do you reside, Mr. Conn? A. Tampa, Florida.

Q. Are you the F. K. Conn who has been interested in these proceedings, both before the Interstate Commerce Commission and in this Court? A. I am.

Q. Are you interested only on your own behalf, or are you also representing the interests of others? A. My own behalf, and the interests of others, through powers of attorney.

Q. How many of, or how much, aggregate principal value of the First and Refunding Bonds of the Florida East Coast Railway Company do you own? A. $387,500.

Q. Who are the other persons whom you are also representing here? A. Edith Conn, my wife; Holsinger Motor Company, Christine Holsinger, George Holsinger, George Holsinger's wife, Mr. William E. and Helen M. Forbes, his wife, Everett M. Henney, Doctor A. R. Byer; Mr. Mel. Clarke, and Doctor William C. Blake. I don't believe I have overlooked any of them.

Q. I think those are all, sir. Will you please state the aggregate of these bonds held by each of these parties? A. Mrs. Conn owns $211,000.

Holsinger Motor Company, $40,000;

Mrs. Holsinger, $114,000.

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Doctor Forbes and Helen M. Forbes, his wife, $300,000.

Q. Do you know—that is a joint ownership, is it not? A. Yes, that is a joint ownership. Henney, $32,000;

Byer, $11,000;

Clarke, $4,000; and

Blake, $9,000.

The Court: Do you know what that adds up to, outside of yourself? A. A little over a million dollars.

Q. Outside of yours? A. No, including mine.

By Mr. MacFarlane:

Q. The aggregate is $1,800,000, including Mrs. Conn's bonds? A. Yes, sir.

Q. Mr. Conn, when did you first acquire any of the First and Refunding Bonds of the Florida East Coast Railway Company. Approximately? A. It will have to be approximate, but, around 1928. Maybe a little before or a little after.

Q. When, with relation to their issuance, and with relation to the receivership? A. Not so long afterwards; I beg your pardon.

Q. And also with relation to the receivership? The insolvency of the road? A. Oh, before.

Q. During what period did you acquire these bonds that you own? A. From that time on, up to the amount that I stated. They have been about the same all the way through from that time on up to, oh, early in the 40's.

Q. With reference to the approval by the Commission of a plan in January, 1945, had you acquired practically all of your holdings by that time, or did you acquire any substantial amount subsequent to that time? A. I acquired practically all of my holdings prior to that time.

Q. Where and how did you acquire your holdings? By individual negotiation? A. In the open market.

Q. When did Mrs. Conn acquire the bonds that she holds? Over what period? A. Oh, over a period in the early 30's to early in the 40's.

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Q. State, if you know, when the other parties whom you represent, acquired their bonds? A. I don't know when they begun to acquire them, but they owned them prior to 1943, and they acquired them over a period of years prior to that.

Q. Mr. Conn, was the desirability of the acquisition of these bonds suggested to you by any person whomsoever, or, was it your own independent idea? A. It was my own independent idea, sir.

Q. In acquiring these bonds, were you assisted in financing the purchase by any other person? A. I was not.

Q. Did the St. Joe Paper Company have anything, to do, financially or by suggestion or otherwise, with your acquisition of your holdings of bonds? And Mrs. Conn's? A. None whatsoever. In fact, I think I acquired—I am positive that I acquired these before—publicly, at least—I ever heard of the duPonts being interested or the St. Joe Paper Company, in this property.

Q. At the time you acquired any of these bonds, did you have any knowledge of any interest of the St. Joe Paper Company? A. I did not.

Q. Mr. Conn, you have been a rather constant attendant upon the proceedings before the Interstate Commerce Commission, and in this Court, have you not? A. I have.

Q. You have heard the various plans that have been proposed? A. Yes, I have.

Q. One of the plans that was proposed, was by the St. Joe Paper Company, was it not? A. Yes, sir.

Q. Were you favorable to that plan before the Commission? A. I opposed it.

Q. Are you favorable to the plan which is now before the Court for approval? A. I am not.

Q. State your reasons for objecting? A. Well, I have felt and stated for a number of years—let me go back.

Q. Speak a little louder, Mr. Conn. A. Since the early 30s, and following that period, when, in round figures, I

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think one-third of our Class I railroads in the United States were in bankruptcy——

The Court: Receivership at that time?

A. Receivership and bankruptcy. May I put it that way. That is my recollection. And I felt that it would be to the interest of the security holders and the public interest to the extent that it was practical to do so, that those roads in financial distress, in their plans of reorganization should unquestionably concentrate, at least, on reorganization which would be debt-free where it could be done. And I have felt that those roads should take every favorable opportunity to get that way. I so stated before the Commission, briefly, in Washington, when the nearest approach, in my recollection, to a debt-free plan that was ever proposed, was the income first mortgage and the common stock proposition, and that I was in favor of a debt-free plan. I have maintained that position all along, and I felt that it would be to the interest of all, and to the best interests of everybody.

Now, this railroad, today, has a very simple capital structure. And, I can not see why it is not in the interest, the best interest of the security holders, and the best interests of the public to reorganize it debt-free, paying off the first mortgage, of which twelve million dollars has already been set aside with the understanding that tenders can be made, practically four million of tenders have been made; only eight million dollars left. When that mortgage is out of the way, I have always understood and had the feeling, that the First and Refunding Mortgage would take the position of the First Mortgage. Upon the retirement of the First Mortgage. And, when that is done, the holders of the Five's of '74 would be, for all material purposes, the owners of the property. They, being the owners of the property, with the cash that I have heard stated that we have on hand, it seems that it would be more practical to reorganize this road, debt-free and let the holders of the

First and Refunding Mortgage bonds, be the equity holders of the property.

And, we, under those circumstances, under those conditions, would hold a substantial portion of that equity and could speak in an independent reorganization, a debt-free reorganization under their independent ownership. That has been my position and that is my position today.

Q. As between an independent ownership and an ownership by the Atlantic Coast Line, which plan do you prefer? Which system of ownership? A. Naturally I prefer a debt-free ownership.

Q. Well, let us leave the matter of debt free for the moment, and go to an independent operation. A. An independent operation.

Q. Why? State your reasons for it? A. Well, it gives us a position to express our opinion in the operation of the road to the extent of our interest in that equity.

Q. Is your interest in the equity of the entire portion, or will your interest in the equity of the entire portion be proportionately greater or less under independent management and ownership that it would be under management of the Coast Line or some other system? A. Far greater, it appears to me, sir.

Q. Do you regard the plan now before the Court which has been proposed by the Interstate Commerce Commission as affording a fair and equitable treatment in connection with the liquidation of your securities, which you at present hold? A. I think it gives us a proper value for our property, for our securities.

Mr. Macfarlane: That is all.

The Court: Is there anything else, Gentlemen?

. . . To which inquiry there was no response.

The Court: Have you made up your mind whether you would vote to accept or reject the Coast Line plan if it were put to you on a vote?

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A. I would vote to reject it.
Q. You are settled on that? A. Yes, sir.
The Court: Are there any other questions?

. . . To which inquiry there was no response.

The Court: Go down, please.

(Witness excused.)

Mr. Milam: Could we have read the last answer of Mr. Conn to Mr. Macfarlane's question? We could not hear it.

. . . The request of counsel was granted and answer read.

Mr. Plimpton: May it please your Honor, I have a little testimony in support of the position of the New York Trust Company, Trustee of the Series D Trust, the holder of an unsecured claim. That is the unsecured claim of the Florida East Coast Car Ferry Company, and of the Trustees of the Flagler Estate, together aggregating $1,900,000, which has been assigned to the Atlantic Coast Line should be subordinated to the claims of the other unsecured creditors, our intention being that these are, in effect, advances by the owners of the Debtor.

The Court: Is that a matter that is set for hearing now? I do not think it is.

Mr. Plimpton: That is included, sir, in our objections to the plan, and I am frank to confess that I do not know whether it is appropriate at this time.

The Court: My thought is this: When Judge Strum specified these creditors, he expressly reserved the question of priority. I do not think that matter was set down for hearing this morning. There is a question, as set forth by the plan, itself, of whether or not there were free assets and I propose to go ahead and decide that, if I can make up my mind about it. Mr. Plimpton——

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Mr. Plimpton: May I just comment on that? The testimony which your Honor read the other night is not completed. My friend, representing the Refunding Mortgage which is to have further cross-examination, and there is a little more testimony on assets. We are prepared to go ahead with that on Tuesday of next week.

The Court: I am afraid I won't be here then.

Mr. Plimpton: That goes before the Special Master, and will be forwarded to you, together with briefs.

The Court: I prefer not to go into this question of subordination of priorities in view of the fact that it has not been set down, and I do not think it is necessary to pass on it for the purposes that we have here. We have——

Mr. Plimpton: I agree with your Honor. I hope your Honor will give me opportunity to present a very small amount of evidence on the subordination.

The Court: That will be all right, but, let us get through with the main question that we have here.

Mr. Plimpton: All right.

The Court: The Coast Line has not started yet.

Mr. Bourne: No, sir.

The Court: If you are ready to do so, proceed.

Mr. Bourne: I would like, first of all, your Honor, to have some stipulation or ruling with respect to the Court records as distinguished from the records before the Commission. There are a great many papers. I think we also ought to cover the receivership record, although that is not technically part of these proceedings. What I have in mind is that some party may, perhaps—, and I think what has happpened in the past in other cases, it has been that parties have felt free to offer in the District Court, anything that is of record in the proceedings——

The Court: I think the law is this: Any record in this Court will be judicially recognized, but, if it is used in this hearing, attention should be called to it so the Court will know what paper you are talking about and the other

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parties will, too. I do not think you have to prove it. Just call attention to it.

Mr. Bourne: Would it follow from that, that it could, upon request, be included in the Appellate record?

The Court: Yes. Just designate it so that everyone will know it is in there. I am not familiar, personally, with what went on before, and the other parties, or, what it is, because I was not here, but the other parties may want to put something in, too, about it.

Mr. Bourne: Does that mean that if anything is offered, it should be specified?

The Court: I think so. If everybody is willing to take a wholesale view like that, it is all right with me.

Mr. Bourne: I want to understand if there is an objection. If there is an appeal, there would be a designation of what is relevant, but it is difficult in this type of proceeding, to itemize all the things that might possibly be relevant.

The Court: I think we should make up our minds, now, as to what is going in and what is not. I could not well decide the case without knowing what was in and what was not, and I do not think anybody else could.

Mr. Bourne: What I am really proposing is the entire court record.

The Court: I think you can not put the entire court record in the receivership or the reorganization proceedings in this record. Who would pay for it?

Mr. Bourne: Who would pay for it?

The Court: Yes.

Mr. Bourne: That happened in other cases I have been in, where, when it comes to the matter, it is designated as to certain things.

The Court: In Appellate matters, there is usually a provision for cutting down the printing. If you are willing to go ahead on a wholesale stipulation, it is all right with me.

Mr. Patterson: I had some experience like that, and it was not satisfactory. I got tied up in a record that cost a good deal of money. I have this feeling. I thought about

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it. And that is, as your Honor stated, that certainly, as far as the reorganization proceeding itself is concerned, that any pleadings or documents filed therein, they are actually a part of this Court's records which are available to anybody at any time.

The Court: They are the records we are now passing on?

Mr. Patterson: In addition to that, it seems to me, certainly, the Commission's report to this Court is part of this record also.

The Court: A point has been made of that, that I never thought of before. My understanding is, all of the things the Commission said is before this Court. Do you not think so?

Mr. Bourne: Physically, the record before this Court includes everything certified by the Commission. I wanted to check up and see whether the certification covers that summary, and if the certification covers the summary, my argument on that point is over. I did not realize that it did. I thought the summary was similar to a head note.

The Court: It does not make much difference to me.

Mr. Bourne: Mr. Gwathmey tells me the certificate covers the summary. I was mistaken. Everything certified by the Commission is before this Court.

The Court: That is my recollection.

Mr. Bourne: In addition, I think that we will find when the time comes, your Honor, that we will all want to refer, almost as a matter of course, to certain things which are not necessarily shown by the Commission's records, but which are shown by the Court's records. I would like to have a general stipulation applicable to the Court record with an understanding, of course, that it does not mean that the fact that somebody asserts, in a pleading, that such and such a thing is so, that that is proved by that assertion. I think if the Trustees of the estate have alleged things, that would be prima facie so as your Honor stated yesterday or day before yesterday. The alternative is——

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The Court: I do not see any objection to letting you refer to it in your argument. Everybody would know what you are referring to, and I would, too. I think it should be limited at this hearing, that is, the swelling of the record, by admissions.

Mr. Bourne: May it then be understood that before the hearing is closed, that I will have opportunity to specify particular documents? I will make it my job, in the meantime——

The Court: Do you see any objection to that?

Mr. Patterson: What kind of documents?

The Court: He does not know.

Mr. Bourne: I said, in this Court.

Mr. Patterson: I think the record in this Court is part of the record.

Mr. Bourne: The Judge said it is not.

The Court: I do not think that everything that happened in this Court is part of the record. You will make up the record and I will not. I want to know what I am ruling on, and I have a right to know.

Mr. Patterson: I had assumed that the pleadings in this Court, which would be part of the case, would take the place of pleadings in an ordinary equity case.

The Court: If you were hearing an equity case, all proceedings that the Court had in that litigation are not part of that record.

Mr. Patterson: No, sir, that is correct. But it would seem to me, here, that we should be able to refer to them.

The Court: I just said that ought to be done by the time the argument is completed. When you get through arguing, I will know what you are talking about, and what reference you have made to the record.

Mr. Patterson: There may be documents that you will want reference to. I would suggest this: This will take work on the part of counsel. I suggest at the conclusion of the argument, counsel should indicate within a reasonable time which of the documents he wants.

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The Court: I will go stouter than that. I want him to tell it in the argument.

Mr. Bourne: I am prepared to do that.

The Court: Let us go along on that basis. The Court will take judicial knowledge of any proceedings in this Court. I will do that, but, you should call attention to it, and let everybody know it is part of the case that we are trying now. It would not be so bad if I was not a stranger to it, but I am a stranger to it, and I want to do what I am doing.

Mr. Bourne: Just in order to have our presentation in an orderly way, I ask your Honor now to take judicial notice of the notice, dated October 21, 1948, filed on November 1, 1948, signed by McCarthy, Lane & Howell, and Alexander & Green, as attorneys for the Atlantic Coast Line Railroad Company, relating to the adoption of the plan of the Atlantic Coast Line Railroad Company, to which notice there are attached seven certified copies of other documents lettered A, B, C, D, E, F and G.

The Court: They are matters filed in this Clerk's office?

Mr. Bourne: Yes, sir.

The Court: Do you mind telling me what they show?

Mr. Bourne: They show action by the Board and subsequent action by the stockholders of the Atlantic Coast Line Railroad Company.

The Court: Oh, yes, stockholders' meeting?

Mr. Bourne: Yes, special meeting.

The Court: Is there any objection to that?

. . . To which inquiry there was no response.

Mr. Bourne: I would like to read briefly from the deposition of R. J. Doss, from which Mr. Patterson read. That deposition, your Honor, in order to identify it, or the testimony—it was not a deposition, that testimony, your Honor, in order to identify it a little more clearly, is from a tran-

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script of record in the *ex parte* document No. 166, increased freight rates, 1947, Washington, D. C. The hearing was held last September—no, September 13, 1947, and it related to a general increase in freight rates for all of the roads.

The Court: I remember the trend of the testimony.

Mr. Bourne: The first section that I will read, Mr. Patterson, is from page 923, five lines from the bottom.

Mr. Patterson: All right, sir.

Mr. Bourne: (Reading) "Passenger train cars were unobtainable during the war period and that, coupled with the tremendous beating which all passenger equipment took during the war in troop travel and other war travel which made it impracticable to withdraw cars from service for needed shop attention, makes early acquisition of a substantial number of passenger train cars imperative.

As a partial step in that direction, the Coast Line joined with its connections in its principal through eastern passenger route, in placing orders on June 13-14, 1946, for a total of 117 new passenger train cars, of which the Coast Line's quota is 74 cars at an aggregate of $8,500,000 at present cost level."

Mr. Bourne: The next quotation starts on the same page, two lines from the bottom:

"While pursuing this program of acquisition of additional new equipment, the Coast Line has also been pursuing as far as possible a steady program of modernization and improvement of existing equipment in its shop, and has sought to keep its power and equipment in serviceable condition for efficient operation."

The next is on page 926, line 9:

"The program started during the latter part of 1943 contemplated a relaying and strengthening of our principal main line, Richmond to Jacksonville with rail of 131 pound section to replace 100 pound rail, and the use of the

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100 pound rail so released for relaying on the important secondary main line; together with roadbed strengthening improved drainage, improved roadway structure, strengthening of bridges, trestles and so forth. Extension of this program was made in 1946 to include main line, Jacksonville to Tampa, Florida."

The next page is No. 927, the very last line:

"Because of the tremendous wear and tear of traffic handled during the war, and increases in axle loads, it was necessary to adopt the 131 pound section of new rail for installation on the main line between Richmond and Jacksonville, now extended to Tampa, and to greatly accelerate the replacement of crossties and placement of ballast."

The next one is at page 931, five lines from the bottom:

"The Coast Line, realizing this condition, attempted to retain sufficient cash to take care of the large expenditure which it was known would have to be made when sufficient material and labor could be obtained. It did not dissipate its earnings by payment of large dividends, the total paid out for that purpose on common stock during the six years 1941 through 1946 amounting to only $16.75 per share, which is an average of approximately $2.80 per year.

During these same six years it greatly reduced its outstanding debt, the net reduction in long-term debt being more than one-third or approximately fifty-five million dollars. This reduction in debt was equivalent to approximately $66.75 a share of stock, or nearly four times the amount of dividends paid."

Mr. Patterson: Is that all?

Mr. Bourne: That is all for that.

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Lewis F. Ormond, for Atlantic Coast Line Railroad Company—Direct.

MR. LEWIS F. ORMOND, having been produced and first duly sworn as a witness on behalf of the Intervener, Atlantic Coast Line Railroad Company, testified as follows:

Direct examination by Mr. Bourne:

Q. Mr. Ormond, would you please state your name and address? A. My name is Lewis F. Ormond, the address, Wilmington, North Carolina.

Q. And what is your position with the Atlantic Coast Line Railroad Company? A. I am assistant vice-president in the accounting department.

Q. Would you please state your business experience from the time you started to work? A. My first position in life was in the accounting department of the Santa Fe Railroad.

Q. That was in what year? A. In 1912. I trained there, occupying various positions until March 1, 1920, when I went with the United States Railroad Administration as a field accountant. I remained with the United States Railroad Administration, engaged in auditing the settlement between the Government and the railroads, as a result of the period of Federal control, until about April 1, 1921, when I accepted an appointment as an Examiner of Accounts with the Interstate Commerce Commission.

Q. What division of the Interstate Commerce Commission was that position with? A. In what is now called the Bureau of Accounts and Cost Finding, in those days it was called merely the Bureau of Accounts.

I remained in the service of the Commission for a period of sixteen years and I finally decided to accept a position with the Atlantic Coast Line Railroad Company as assistant comptroller.

Q. That was in 19— A. 37.

Q. —37? A. And I have been successively promoted to the position of Comptroller and Assistant Vice-President.

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Q. You testified before the Interstate Commerce Commission in this railroad reorganization proceedings on behalf of the Atlantic Coast Line Railroad Company, did you not? A. I did.

Q. I show you a proposed exhibit of five sheets, entitled "Florida East Coast Railway Company, Scott Loftin and John W. Martin, Trustees, Statement of Additions and Betterments Charges, Years 1946-1947, and 1948 to October 31st, other Than Those Relating to Rehabilitation and Improvement Program and Equipment Obligation Maturities for the Same Period." Was that prepared by you? A. It was.

Q. Where did you get the information set forth on it? A. From the staff of the Receivers in St. Augustine, I having visited their offices to assemble certain information with this, along with other types.

Q. By the "Receivers", you mean the "Trustees"? A. Yes, the Trustees. Excuse me.

Mr. Bourne: I offer that in evidence.

> . . . The instrument last above referred to was received and filed in evidence and marked Intervener Atlantic Coast Line Railroad Company's Exhibit No. 16.

Mr. Bourne: Would it be of any convenience to your Honor if a set of these is given to your Honor as we go along?

The Court: Yes, so I can understand what he is saying.

By Mr. Bourne:

Q. Mr. Ormond, would you just state briefly, in your own way, what Atlantic Coast Line Railroad Company Exhibit No. 16 is intended to show. A. It occurred to me that it would be interesting and informative to know the extent to which expenditures of the Trustees for additions and

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betterments, other than those provided for in the improvement and rehabilitation program of the Florida East Coast Railway Company, as set out in the Commission's report, were made. Therefore, I assembled and have a recapitulation on this first sheet of the exhibit of those expenditures.

I might explain that the expenditures here shown are not segregated by Court order. They are segregated by the periods in which they were incurred.

Turning to the second page, it will be found that that sheet relates to expenditures of the type which I have referred to, for the calendar year of 1946. It shows the book charges at the top, separately, for road and equipment and general, and total, and then deducts from that the amount that owing as of December 31, 1946, on equipment accruals which had been charged to additions and betterments during that calendar year.

In the lower section of the statement, the A and B charges,—"A and B" mean additions and betterments,—are assembled and assigned to the several projects contemplated in the rehabilitation program, which have been shown separately. And by deducting the total of those latter projects from the book charges as modified by the debt on equipment purchases at the bottom of the page, the addition and betterment charges which were not in connection with the rehabilitation program are shown. The sources of the information are shown in two notes at the bottom of the statement.

Mr. Bourne: Your Honor, I would like to say that in connection with the introduction of this exhibit, we are not introducing it with the idea of obtaining any adjudication, or estopping anybody as to this exhibit. It is merely for the general information of the Court and of the other parties, and we will ask, ourselves, to be free to correct any errors. There may be errors as to what went into the rehabilitation program and what did not. It is simply for general information.

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By Mr. Bourne:

Q. Mr. Ormond, you heard Mr. Patterson read the testimony which you gave in a train operation case? A. Yes.

Q. What was that case? A. That was a case before a three Judge Federal Court involving the taking off of Trains 59 and 64 between Sumter and Columbia, South Carolina.

Q. Columbia, South Carolina? A. Yes.

Q. You also heard him read the testimony given by Mr. Trundle, in the Florida case? A. I did.

Q. That involved what? A. That involved the taking off of trains in Florida.

Q. Who is Mr. Trundle? A. Mr. Trundle is at present Comptroller of the Coast Line.

Q. Is he your immediate junior? A. He is.

Q. He occupies the position you occupied before you became Assistant Vice-President, is that correct? A. That is correct.

Q. Are you equally familiar with the figures, to the effect of which Mr. Trundle testified in the testimony which Mr. Patterson read? A. I am.

Q. Did you participate in the preparation? A. I did.

Q. Did you also hear the testimony of Mr. Doss which was read by Mr. Patterson? That is, the testimony in *Ex Parte* 166? A. I heard it read.

Q. Did your department have anything to do with the preparation of the figures or the review of the figures contained in that testimony? A. We went over that testimony when it was in tentative shape. Before it was finally prepared.

Q. Now, in all three instances, that is, your testimony and Mr. Trundle's testimony and Mr. Doss' testimony, was not the contention made that during the specified periods, the revenues from the operations of the railroads owned by the Atlantic Coast Line Railroad Company were not

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sufficient to pay the fixed and contingent charges, which, by reason of the existence of mortgages, were a lien on those railroads? A. That is true.

Q. How was the other income of the Atlantic Coast Line Railroad Company treated in the computations which formed the basis of the testimony given by yourself, by Mr. Trundle and Mr. Doss? A. Well, so far as the showing of the deficit from operations is concerned, the other income was completely thrown out and ignored.

Q. What are the principal sources of the Atlantic Coast Line Railroad Company's other income? A. Dividends on stock.

Q. Well, now, will you be specific, please? What is the largest single item? A. You mean, in point of dollars?

Q. In point of dollars. A. It varies from year to year, and it is rather difficult to say, but I should say over a period of years the largest source of dividend income is unquestionably dividends on the L & N stock, Louisville and Nashville Railroad Company stock. Now, there are other sources of income.

Q. I want to develop the L & N a minute. How many shares of L & N stock does the Atlantic Coast Line Railroad Company own? A. 823,427.

Q. And what has been the present dividend on that L & N stock? A. My recollection is it has been paying $3.87½ a share.

Q. I am not going to hold you to exactness, but what is the next largest item? A. Well, that varies from year to year. It is quite possible that circumstances will arise when there will be a heavy dividend or unusual dividend, let us say, on some other stock that is owned. But, generally speaking, I should say the next largest one, and certainly, here, that we are dealing with——

Q. Yes, that is what I want. A. The next source of income has been the Atlantic Coast Line's Coast Line one-half earnings of the Clinchfield, which is leased jointly by

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the Atlantic Coast Line Railroad Company and the L & N but is separately operated. It is not operated by the Atlantic Coast Line Railroad Company.

Q. Well, is this a correct statement: That the Atlantic Coast Line Railroad Company and the L & N each have a one-half interest in the Clinchfield and consequently gets one-half of such earnings of the Clinchfield as are paid to its owners, but that the Clinchfield is, as a matter of fact, as a matter of Interstate Commerce Commission accounting, and as a matter of financing, handled separately? Is that correct? A. As a matter of Interstate Commerce Commission accounting, it is definitely separate. I do not quite understand your question in regard to——

Q. By financing, I mean separate mortgages, for example? A. Well—the Atlantic Coast Line Railroad Company—two lessors would be parties to any mortgage, unquestionably.

Q. As guarantors? A. As guarantors.

Q. But the Atlantic Coast Line Railroad Company's mortgages do not cover the Clinchfield line? A. Not by any means, no, sir.

Q. And the Clinchfield mortgages do not cover the Atlantic Coast Line Railroad Company? A. No, sir, not at all.

Q. Now, is the Georgia Railroad situation somewhat similar to the Clinchfield situation? A. Quite similar.

Q. Did I ask you where the Clinchfield Railroad operates? A. No, you did not.

Q. Would you say, please? A. It runs from Spartanburg, South Carolina, to Elkhorn, Kentucky.

Q. Is that important, both from an operating point per year, and revenue produced? A. It is a coal carrier, and in recent years, its earnings have been very favorable. It serves some important coal-producing territory.

Q. Where does the Georgia Railroad run? A. The Georgia Railroad runs from Augusta, Georgia, to Atlanta, with a branch down to Macon.

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Q. And has that been a producer of earnings in recent years? A. Well, of course, during the war it was a heavy producer of earnings. It is a producer of earnings, but they are not particularly substantial, or have not been particularly substantial in recent years.

Q. Now, are there any items or sources of non-operating income or income which are sufficiently important to mention? I am trying to give just a general picture of what these other income items are. A. Well, the Coast Line had dividends on several other stocks. They are the owners of an interest in the Richmond-Washington Company——

Q. The Richmond-Washington Company is what? A. That is the controlling company for the line between Richmond and Washington, operated by the R. F. & P. Railroad Company. They also own stock in some non-carrier companies, with securities in Fruit Growers Express, and other dividends from these sources. But, I think that the two separately operated leased organizations, the Clinchfield and the Georgia and the L & N dividends would be the important items that you want mentioned in connection with the non-operating income of the Coast Line Railroad Company.

Q. Now, as a matter of accounting under the Interstate Commerce Commission accounting regulations, are all Federal income taxes deducted in calculating net railway operating income? A. Yes, sir.

Q. Is it then the case that if—— A. Just a moment. In some cases there would be a negligible amount of Federal income taxes, which might be applicable to non-carrier matters. I do not recall anything in this particular case, but that would fall below the line and would not involve railroad operations.

Q. Let me ask you this question. In the exhibits referred to by you, yourself, by Mr. Trundle or Mr. Doss, in the testimony which Mr. Patterson read, and in exhibits that we are going to offer this morning, has the income—

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have all of the Atlantic Coast Line Railroad Company's Federal taxes, based on income — income taxes, excess profits taxes or what not—been deducted in calculating net railway operating income? A. Yes, sir.

Q. That means that if you have additional income or have other income, which is not included in calculating net railway operating income, but is added separately later as other income, the taxes that you get—that you have to pay as a result of the income, are nevertheless included in calculating that railway operating income? A. You mean taxes are deducted from railway operating income?

Q. Now, what was the theory of your testimony and that of Mr. Trundle and Mr. Doss in these rate and train operation cases, on the subject of net railway operating income and other income? A. Well, first let me say, while the situation as regard to taxes is fresh in everybody's mind, that the situation which you developed by your last question is explained in the testimony that I gave before the three-Judge court.

Q. I noticed that, but I wanted to bring it out again. A. Now, going to the theory. The theory very simply is this: If the Atlantic Coast Line is seeking to make an operating—

Q. You are talking now about the theory on which you made the presentation in the three cases? A. Exactly. If the Coast Line is seeking to make an operating economy, it seems to us that the significant thing, if the regulatory body is going to make a decision as to whether or not we will be permitted to make that economy, is the operating income and operating income only of the railway. And, of course, the same theory——

Q. You said the operating income only. But you also included in your discussion, the fixed and contingent charges? A. Yes, sir.

Q. The relation of the operating income to the fixed charges? A. Yes, that is the fixed and contingent charges. I will come to that later. Those fixed and contingent charges

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apply to the property, and the operating earnings of the property ought to pay them. Exactly the same theory is applicable when you go before a regulatory agency like Mr. Doss did, seeking an increase in rates. If the earnings of the property from its operations are not sufficient to pay the fixed charges relative to that operation, then we will have to have higher rates.

Q. And your position was that so far as the rates were concerned, or the abandonment of these train operations, if the Atlantic Coast Line Railroad Company had other income from L. & N. stock and Clinchfield and Georgia Railroad, that ought not to be considered? A. Definitely not.

Q. But you did discuss that and testified on it? A. On what it consisted of.

Q. In your judgment, is that theory on which you relied in the rate case and in the train operation cases, applicable in attempting to evaluate what Mr. Stott called the package of Atlantic Coast Line Railroad Company securities? A. Not by any stretch of the imagination, no. That package of securities, if we can use that turn for the purpose of this statement, is an equity or a debt, as the case may be, depending on the type of security, of the Atlantic Coast Line Railroad Company and the income that will be used to service that package of securities is the whole income from the Atlantic Coast Line Railroad Company. Not just its operating income. And, a share of stock in Atlantic Coast Line Railroad Company carries with it an equity in everything the Atlantic Coast Line Railroad Company owns. Not just its operating income.

Q. From the point of view of its prospective bondholders or stockholders, that is, of the Atlantic Coast Line Railroad Company, will the fact that the L & N stock or the interests in the Clinchfield or Georgia Railroad are unpledged make them less valuable than they would be if they are pledged under the Atlantic Coast Line Railroad Company's present mortgages? A. If I understand your

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question, I should think it would make the package of the securities tremendously more valuable if these particular assets were not pledged.

Q. Have you anything further to say with respect to your testimony before the three Judge court with respect to the Columbia train operation? Mention was made of a large deficit which was emphasized in that testimony as having resulted from operations for the years 1946-1947. A. Well, all of the railroads in the United States were undergoing a situation, corresponding to that of the Coast Line in those years, varying only in degree. And that was because the inflationary spiral tremendously increased the cost of labor and materials, both of which were to a large extent beyond the control of the railroads, and at the same time the petitions of the railroads generally for relief in the way of increased rates and charges were lying dormant in the Commission's office.

Throughout the whole year 1946, while every month costs were increasing, we had practically no relief in the way of increased charges. It was not until January 1, 1947, that *Ex Parte* 162 was effective; the rate increase was made effective. And that same lack of balance between current costs and charges, continued on into 1947 and throughout 1947 in a somewhat lesser degree. As a matter of fact, it is only within the last few days that the Commission has announced an interim increase of five per cent in certain charges covering a wide variety of commodities to further aid in closing up, or, catching up in the lag between the charges assessed by the railroads of the United States and the costs which they are currently incurring.

Now, I have before me a publication of the American Association of Railroads showing the net railway operating income of Class I railroads in the United States and the return which that railway operating income represented. The return of these railroads in the year 1946 was 2.18 per cent, which was the lowest return, except for the de-

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pression years of 1931 through 1935, and the recession year of 1938, that the railroads had experienced in 27 years.

The Court: When you get to a convenient pausing place, we will adjourn.

The Witness: I will be through with this in about five minutes.

The Court: Then I think we will stop right here.

(Witness temporarily excused.)

. . . And thereupon Court adjourned, to be reconvened at 2:00 o'clock p. m., Wednesday, January 12, 1949.

. . . And thereupon at 2:00 o'clock p. m., Wednesday, January 12, A. D. 1949, Court reconvened pursuant to adjournment of the morning session, and the following further proceedings were had:

The Court: Be seated, gentlemen. You can proceed.

Mr. Lewis F. Ormond, having been previously produced and first duly sworn as a witness on behalf of the Intervener, Atlantic Coast Line Railroad Company, was recalled to the witness stand, and further testified as follows:

Direct examination (Resumed) by Mr. Bourne:

Q. Mr. Ormond, when we recessed, you were giving some of the reasons why the railroads had such a poor showing in 1946. Will you proceed, please? A. Those same conditions which were applicable to all railroads obtained to a lesser degree in 1947, in fact, to some extent down to date.

The Florida East Coast Railway was not exempt from them as I shall later show.

Aside from the conditions affecting railroads generally, the Coast Line's operating showing for the years 1946-1947

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was seriously affected by the special circumstances with which it was confronted. It was in the middle of a very general rehabilitation program on its property which inevitably resulted in heavy charges to operating expenses, and as a consequence in unsatisfactory operation performance from the standpoint of finances.

This situation resulted in part, in the showings that were used in my testimony. And, as explained to the three Court judges, or the three Judge court, circumstances of that kind are cyclical and they come on at varying periods with different railroads, and it was no criterion of the future or of the past that in these two years when the Coast Line engaged in this program, that its operating performance from the standpoint of finances, should have been unsatisfactory. That is about all I have to say on that subject.

Q. Mr. Ormond, did you prepare a proposed exhibit entitled "Atlantic Coast Line Railroad Company-Florida East Coast Railway Company, Scott M. Loftin and John W. Martin, Trustees, Net Railway Operating Income and Net Income for Periods shown Appropriately Modified and Compared", consisting of three sheets? A. Yes, sir.

Q. Except for the adjustments, what were the sources of the figures contained in that proposed exhibit? A. Books of account of the two railroads. And reports to the Commission.

Q. And the adjustments are explained in the proposed exhibit itself, is that correct? A. That is true. Showing the sources of the items I have used for the adjustment purposes.

Mr. Bourne: We offer that exhibit in evidence.

> . . . The instrument last above referred to was received and filed in evidence and marked intervener, Atlantic Coast Line Railroad Company's Exhibit No. 17.

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The Court: This is a comparison of the two railroads? A. Yes, sir.

By Mr. Bourne:

Q. Mr. Ormond, will you just state in your own words, what Exhibit 17 shows? A. The exhibit shows separately for the Atlantic Coast Line Railroad Company and the Florida East Coast Railway Company, and for the calendar years 1946-1947, and the first ten months of 1948, in item (a), the net railway operating income from the books of account.

The first step is to restore to the net railway operating income, in the case of the Coast Line, the accruals for Federal Income taxes applicable to those years and periods.

The reason for that is that I seek to develop in this exhibit the net railway operating income surcharged only with the Federal income taxes which net railway operating income generated. And, to apply against non-operating income, the Federal income taxes which were generated by non-operating income.

The next adjustment is to deduct certain adjustments made both by the Coast Line and the Florida East Coast in these periods in tax accruals which related to other prior periods.

In the case of the Coast Line, I am using the year 1946 for illustration, and I have deducted from net railway operating income, $3,616,175.00, which was the excess profits carry-back credit entered in that year, plus $150,000 also credited in that year, in the adjustment of the accruals for prior years. The other tax adjustments are similar.

The next adjustment is applicable to the Florida East Coast only. It is in detail on the third sheet of the exhibit. What I have done here is in furtherance of what I said a few moments ago as to the heavy maintenance expenditures of the Coast Line in these particular periods.

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Lewis F. Ormond, for Atlantic Coast Line Railroad Company—Direct.

In order to provide any basis for a reasonable and fair comparison, it is necessary, first, to put the two companies on the same level of maintenance, and this Sheet No. 3 is designed to do that.

The procedure is to take the total maintenance of the Coast Line for the three periods and then, in Item 4, to deduct from it, the charges to maintenance which are mere book entries, and which do not involve the expenditure of cash, such as depreciation, amortization and so forth.

This produces in item 5, a total maintenance after deductions; you might almost say that that figure is cash maintenance.

The next item is ACL Railway operating revenues. From the books. And the procedure is to ascertain what percentage Item 5 has or bears—the cash maintenance—to railway operating revenues. In other words, how much out of each dollar of revenue did the Coast Line spend for maintenance in each of these periods.

Those percentages are shown in Item No. 7.

Then, in Item No. 8, I take the FEC Railway operating revenue and apply against it the percentages determined for Coast Line as shown in Item No. 7. This produces in Item 9, FEC maintenance as determined on the basis of Atlantic Coast Line Railroad Company's percentages of revenue. In other words, I say here in effect, the East Coast, if it had spent out of each dollar of its revenue, the same amount that the Atlantic Coast Line spent out of each dollar of its revenue, this is what its maintenance expenditures would have been.

Q. That is the cash maintenance expenditures, in Item No. 9? A. That is the cash maintenance expenditures in Item No. 9.

To that, in Item 10, I add the book maintenance charges drawn from the FEC books, so as to produce under Item 11, a total FEC maintenance as reconstructed.

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Q. Consisting of cash charges or hypothetical cash, each bearing the same relation to operating revenues as the actual cash charges of the Coast Line, then added to that hypothetical cash are the actual bookkeeping charges? A. That is exactly correct.

In Item 12, I show the total maintenance for the FEC as shown by its books. In the final figure on the statement for each period, that gives the modification it is necessary to take in the FEC book maintenance figures in order to put them on a parity with the Coast Line.

Q. Now, Mr. Ormond, dealing with that particular procedure followed on Sheet 3, you could, I presume, have brought the two on the same maintenance level by ascertaining the percentage of the Florida East Coast Revenue dollars used for cash maintenance and then applied that percentage to the Coast Line's operating revenues and reconstructed the Coast Line's maintenance charges on a lower level? A. That is right.

Q. In this instance, you just bring up the Florida East Coast to the Atlantic Coast Line level rather than to reduce the Atlantic Coast Line to the Florida East Coast level? A. That is true.

Q. It is your position that this procedure implies that there was under maintenance of the Florida East Coast Railway during this period? A. Not by any manner of means.

Q. Is it simply a method used by you as the best available method of producing the fairest kind of comparison that can be made? A. That is right. Only for the purpose of producing comparison, without any intimation even that the maintenance expenditures of the Florida East Coast Railway Company were sufficient or insufficient or anything else.

Q. Now, will you proceed back to page 1, please? A. On page 1, the modifications developed on page three are

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employed as an addition--or, rather, as a deduction from the FEC net railway operating income. These modifications amounted to $2,669,963 in the year 1946. Only $211,538 in the year 1947, and to $1,026,320 in the ten months of 1948. After applying the modifications in Item (c), I produced net railway operating income of the two companies as modified before deduction for Federal income taxes thereon.

The next item is to deduct from the net railway operating income, income tax at 38 per cent in the ten months' period of 1948, computing it at 38 per cent of $3,501,447.00, which is the excess of the net railway operating income for Coast Line of $6,767,417 for that period over the fixed charges for the same period of $3,265,970. The corresponding adjustment is not made in any other year for Coast Line, nor is it made in any year for the Florida East Coast because in such other periods, and for the Flordia East Coast in all periods, no income tax would have applied to the operating income after the deduction of fixed charges.

Q. Mr. Ormond, let me interrupt you there. There are two instances where there is a capital D in a parenthesis, and the figure which that follows is the one that is indicated as a deficit, isn't that correct? A. That is correct. After making this tax adjustment I come to Item (e) which is the net railway operating income as modified, after deduction of applicable Federal income tax. And, since so much has been said about operating income, I might point out that these modifications change the book figures to the extent that in the year 1946, the Coast Line had an adjusted net railway operating income of $1,500,000 plus, as compared with $370,000 for the Florida East Coast. In the year 1947, the Coast Line had a net operating income of, had a net railway operating income of $2,749,000 plus as compared with a deficit for the Florida East Coast Railway of $67,257.00.

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In the ten months of 1948, the Coast Line had a net railway operating income of $5,436,867 as compared with $375,566 for the East Coast.

And, I want to again emphasize that in showing deficits for the Florida East Coast Railway, for these periods it is certainly in the year 1946 and in the ten months of 1948, largely due to the maintenance adjustment.

And, as was said previously, that maintenance adjustment is not represented to be a figure which the East Coast necessarily should have spent. It was put in here merely to put the two companies on a basis for logical comparison.

Q. Isn't this true, though, Mr. Ormond? That after you make the tax adjustment which as I remember it was also made in Mr. Gordon's Exhibit for 1947, the reported net railway operating income of the—income available for fixed charges of the Florida East Coast, was only about $296,000.00, and that the reason for that, or a reason for that was that in that year, the maintenance expenditures have much more nearly approached the Atlantic Coast Line level than in 1946 or 1948, so that a maintenance adjustment in that year is very small. A. Negligible. You are perfectly correct.

Q. Now, would you proceed, please. A. I then thought it would be advisable to carry this statement down to the point of developing income available for charges. In other words, to bring in the non-operating income, particularly of the Coast Line, and the taxes on it. So, in Item (f), I show the other income which is non-operating income, drawn from the books.

And, then, in Item G, in miscellaneous deductions which are made from that income. That is also a book figure in each case.

And then in Item (h), I have the net total income. That is, other income, from which I deduct the federal income tax actual, applicable to the other income.

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For the year 1946 and for the year 1947, the deductions apply against Coast Line only, as they do also in the ten months of 1948. But, for the first two years, the deductions are the taxes actually paid by the Coast Line.

For the ten months period of 1948, it is the accrual which would be applicable against the non-operating income after applying an appropriate portion of that accrual against operating income. I call your attention to the fact that the deduction we are now talking about for the ten months of 1948, in the case of the Coast Line, is $1,319,450.00, whereas, above, in that same column, I deduct, from operating income, $1,330,550.00, the sum of those two being the total of federal income taxes on the Coast Line's books as of October 31, 1948.

After making this deduction, we have the residue of other income after federal income taxes. That is in Item (i). And, by adding that to Item (e), which was the net railway operating income as adjusted I come back to the income available for fixed charges.

Those figures indicate that for the year 1946, we had available for charges, $5,886,002.00 for the Coast Line, and the F. E. C. had $612,151.00.

For the year 1947, The Coast Line had $8,977,369.00, as compared with $85,002.00, for the Florida East Coast, and, for the ten months, 1948, the Coast Line had $10,118,-930.00 compared with $486,137.00.

Q. Is that all you have to say with respect to that exhibit? A. Yes sir.

Mr. Bourne: Now, if your Honor please, I offer in evidence the summary of argument in behalf of the Atlantic Coast Line Railroad Company, January 7, 1948, consisting of fourteen pages, with two appendices. I offer that for the limited purpose of showing what was before the Commission. Not for the purpose of proving anything contained in it.

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My reason for offering it is that the Commission's report of March 25, 1948, contains references to a table which is in it, and in addition, the dissent makes a criticism of the use of it, and I want to have it before your Honor so that I can properly discuss that on the argument and the Commission's certified record before your Honor includes briefs as well as other material. It does not include this.

The Court: Is there any objection?

Mr. Patterson: If Your Honor please, this is just a brief which Mr. Bourne filed with the Commission, and I object to his filing the briefs unless we are going to file ours. I think this is no way of proving any facts.

The Court: Well, I can not do anything about it, about considering something we ought not to have. You say, the parties went out of the way to get some facts by taking them from a brief? It may be so or may not be so.

Mr. Bourne: Your Honor can not determine whether it is so without seeing the paper.

The Court: I do not know if I can determine it then.

Mr. Bourne: Yes, you can. I can show——

The Court: Do you mean to confess that that is true, that they got the facts from the brief?

Mr. Bourne: I confess that they got the facts from the summary, but the summary got the facts from the record. They say the facts are not from the record, and I challenge that statement.

Mr. Milam: May your Honor please——.

The Court: Is there any objection here that the Commission erred in point of law?

Mr. Patterson: Yes, sir.

Mr. Milam: Yes, sir. May I point out or state our position in that, if the Court please? I think Mr. Bourne might as well admit the Commission got some figures as to what Mr. Ball paid for his bonds and how much he has in them, too. How much Mr. Lynch paid for his bonds, and how much he sold, and how much he has available today. The

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only source they got that from is from Mr. Bourne's tabulations handed up here. He might as well admit that because it appears on the face of the Commission's report that it is true.

The Court: Do you object to the brief, then?

Mr. Milam: I do object to it. If he wants to admit before the Court that this is what I filed in separate argument, as far as I am concerned, he can read the whole transcript of his oral argument before the Commission in this argument here before the Court.

The Court: He can not do that. In the Commission's report, there is some admission of fact which I might guess was gotten from the brief. Now, you want to show what the brief is, that the report refers to?

Mr. Bourne: Precisely, and that is all.

The Court: In explanation of what the order says? It may be lawful and may not. I do not think it is. I think it ought to be in for me to understand what it is all about.

Mr. Milam: So long as the Court understands that that is the suggestion by the Coast Line, not offered in evidence, and simply before the Commission, I have no objection.

The Court: I have learned long ago that a brief does not prove anything. It is an effort to argue the case. That is the point of a brief.

Mr. Patterson: This is not a compilation of the figures you included in the appendix of the brief?

Mr. Bourne: Yes, appendix A.

Mr. Patterson: That is what I was looking for. This is where it came in?

The Court: It is admitted for the purpose stated.

> . . . The instrument last above referred to was received and filed in evidence and marked Intervenor Atlantic Coast Line Railroad Company's Exhibit No. 18.

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Lewis F. Ormond, for Atlantic Coast Line Railroad Company—Direct.

By Mr. Bourne:

Q. Mr. Ormond, would you please look at Coast Line Exhibit No. 18, Appendix B, and the schedule, Schedule C-2, Sheets 1 to 5, and I hand you a proposed exhibit, entitled "Earnings Per Share of Stock under proposed Unification of Atlantic Coast Line and Florida East Coast compared with similar earnings, assuming an internal reorganization of Florida East Coast, twelve months ended October 31, 1947."

My question is this:

Is the proposed exhibit, consisting of five sheets which I now show you, identical with Exhibit B, Appendix B to Exhibit 18, except for changes in phraseology, headings and so forth, which were necessitated in part by reason of the fact that the Schedule C-2 referred to our reply brief? A. That is correct.

Q. Now, did you prepare the proposed exhibit to which I have just referred? A. I did. It was prepared under my supervision. I participated in the preparation of it.

Q. And what are the sources of the figures contained in it? A. They are either the reported figures of the two companies to the Interstate Commerce Commission, or any departures from reported figures are explained in the document itself.

Mr. Bourne: I offer that document in evidence, your Honor?

The Court: Is there any objection?

Mr. Patterson: Are you offering a separate document, or is this the same thing? Do I understand it is the same thing you have in this document that you have already filed?

Mr. Bourne: It is right in here (indicating).

Mr. Patterson: You have just copied that?

Mr. Bourne: All of the figures have been copied.

Mr. Patterson: Do you want to put it in as an exhibit?

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Mr. Bourne: Yes, I want to put it in as an exhibit.

Mr. Patterson: I think if it is in here, let this stand.

The Court: They are for different purposes, Mr. Patterson? One was to show what was before the Commission, and the other is to show what you say is true.

Mr. Bourne: Correct.

Mr. Patterson: All right.

> . . . The instrument last above referred to was received and filed in evidence and marked Intervenor Atlantic Coast Line Railroad Company's Exhibit No. 19.

By Mr. Bourne:

Q. Mr. Ormond, will you state the purpose of Exhibit 19? A. The over-all purpose is to compare the income-producing possibilities under various assumptions, of the package of securities proposed in the Commission's plan for reorganization with the hypothecated package which might have been used in the independent reorganization or internal reorganization of the Florida East Coast.

Q. You speak of "hypothecated package of an internal reorganization of the Florida East Coast". What security structure did you assume as a hypothetical alternative? A. The security structure that was proposed is one of the Commission's report prior to the time that they approved the Coast Line—approved their own plan providing for unification with the Coast Line.

Q. By "one", you mean the—? A. The last previous report.

Q. That was identical, was it not, with the security structure proposed by Examiner Jewell in '46? A. That is correct.

Q. This Exhibit 19 covers 12 months ended December 31, 1947. Was that period used in connection with the argument in January, 1948, because it was the latest twelve

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months' period for which figures could be assembled, checked and put together? A. That is right.

Q. In your judgment, would it have been suitable to have used a period of fifteen months or sixteen months or eighteen months, in view of the seasonal character of the business of the two railroads? A. I don't think so. You should confine yourself to a twelve months' period, preferably a calendar year if it so happens the calendar year forms the last figures you have available. But if it so happens that the calendar year will not form the most recent figures, then, what you would call the last fiscal year. It should include the latest figures for the last twelve months.

Q. The purpose of page 1 is what? A. That is the basic statement, and its purpose is to produce the income available for charges and after charges, separately, for the unified property, ACL-FEC, and for the FEC on an independent basis.

Q. By "basic", you mean this statement is the source for figures used in the subsequent sheets which contain the actual comparison of the two plans? A. That is right.

Q. Well, now, have you any explanation that you think should be made with respect to Sheet 1, or the footnotes which are on the reverse of sheet 1? A. I think, primarily, the thing to be pointed out about Sheet 1 is that it produces average earnings available per share of stock of $5.67 for the unified plan as against $2.93 for the independent or internal plan. I think the footnotes to that statement are clearly explained. If anybody has any question about them, I would be glad to go into them.

Q. Well, now, Sheet 2, purports to be what? A. That applies earnings available for the securities to be issued under the two plans, based on the figures shown on Sheet 1 and assumes that all available income is distributed. For the internal reorganization——

Q. In other words, that doesn't distinguish between earnings and dividends, so far as the security holders are con-

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cerned. It assumes everything earned will be paid out in dividends? A. Everything earned after fixed charges; everything available to be paid out, is paid out under this assumption.

On this basis, the internal reorganization would produce, as a result of the twelve months' period here covered, an income of $33.44 for the securities to be exchanged for one-one thousand dollar first and refunding bond, whereas, under the unification reorganization, the income for one,-one thousand dollar bond would become $36.84. The advantage of the unification expressed, percentage-wise, is 10.17 per cent.

Q. Now, Sheet 2 does not take into account, does it, the cash payment by the Atlantic Coast Line, of $4,125,000.00, which means $91.67 for each one thousand dollar F. E. C. bond? A. No consideration whatever is given to it.

Q. Is that true of all the sheets in this exhibit? A. It is.

Q. And similarly true of all the sheets in the proposed exhibits that we have, relating to the following year? A. That is true.

Q. These are only comparisons of the securities? A. That is right.

Q. Now, what is the difference between Sheet 2 and Sheet 3? A. They are same in that it is assumed that all income available for securities will be distributed, and the main difference, in fact the only difference is that in this Sheet 3 we have added, in the case of the unification reorganization, an estimate of the savings expected to result from the merger after deducting Federal income taxes from those savings.

Q. That is the item of— A. $418,500.00.

Q. The item which reads "Net estimated savings to result from merger, after deduction of Federal income taxes," A. Yes, sir.

Q. How was that figure, $418,500.00, obtained? A. The Commission said, in its order, that the savings from this

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merger eventually would run between three hundred and fifty thousand and a million dollars.

The Court: A year, do you mean? A. Per annum, yes, sir. We took those two figures and added them together and divided them by two which produced, I think, $775,000.00, a mean of the two extremes.

By Mr. Bourne:

Q. $675,000.00? A. $675,000.00, and then applied against that figure, 38 per cent income taxes on the theory that if you have that additional income, you would have to pay taxes on it, and then, produced in that manner, the net figure of $418,500.00 as shown here.

The Court: Would you mind telling me where that saving comes in? What makes it? A. It comes in three different ways, your Honor. One, through the consolidation of purchasing departments. Two, through the consolidation of certain yards——

Q. You mean these savings are savings in salaries. A. In salaries and costs of materials and——

Q. Is one purchasing department cheaper than another? A. Yes, the larger purchases made by the Coast Line as our purchasing agent testified, would enable him to make some economies. The other was a saving which more or less explains itself; by being closer to sources of supply our organization would avoid certain freight charges that are now paid by the Florida East Coast.

Mr. Bourne: Your Honor, that is at pages 322 to 325 of the report of April 8, 1947.

The Court: I knew it was in there.

Mr. Bourne: I thought you might want it for convenient reference. A. Under this third sheet, comparison of earnings of the securities to be issued——

The Court: Let us think about that while my mind is on it. If you save freight, the Coast Line loses it, doesn't

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it? The F. E. C. gets it over the Coast Line. A. Yes, if you get it over the Coast Line, but, they don't.

Q. They would receive some? A. Yes.

The Court: All right, go ahead.

By Mr. Bourne:

Q. Had you finished with Sheet 3? A. I just wanted to call attention to the comparison. The internal reorganization would produce $33.44 for the package of securities, whereas the unified reorganization would produce $38.27 for the package, or an advantage of 14.44 per cent.

Q. Would you explain Sheet 4? A. This statement, No. 4, corresponds more nearly to Sheet No. 2 in that it does not give any consideration to prospective savings. However, it assumes that the percentage of income available which would be paid out by the internal reorganization would be the equivalent of a four dollar dividend on the part of the unification reorganization.

Q. By that you mean that the same percentage of earnings would be paid out under an internal reorganization as would be paid out with a four dollar dividend under the unification reorganization? A. Exactly.

Q. Is that correct? A. Exactly. Down in the second half of the statement you will observe that the four dollar dividend figures 70.52 per cent of the income available for dividends. So, using that figure, we applied the same percentage against the income available for dividends on an internal reorganization.

Q. And what is Sheet No. 5? A. You do not want the comment on the results, here?

Q. I want to comment on both 4 and 5 later. A. Sheet 5 is the same proposition, as far as the extent to which income is utilized in dividends is concerned. But here, again, we bring up the savings of $418,500.00, and use them as an added income of the unification reorganization.

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Q. Do you think that Sheets 4 and 5 have any tendency to be unfair to the unification reorganization as compared to the internal reorganization, and if so, why? Do you think they tend to understate—the percentages are lower on Sheets 4 and 5 than the earlier sheets? Do you think it is fair to say that they really understate the margin of superiority? A. Oh, definitely.

Q. Why? A. In the first place, because there is a considerable sum which is not disbursed in dividends and is left in the respective set-ups to which the securities issued under bonds, would have title, and that isn't reflected there.

Q. Now, have you prepared another proposed exhibit, identical, except that it covers the twelve months ended October 31, 1948, which I show you? A. Yes, I have.

Q. And are the sources the same? A. Exactly.

Mr. Bourne: I offer that in evidence.

> . . . The instrument last above referred to was received and filed in evidence and marked Intervener Atlantic Coast Line Railroad Company's Exhibit No. 20.

By Mr. Bourne:

Q. What does Exhibit No. 20 show as compared with Exhibit No. 19? A. It shows a very much greater superiority throughout for the unification reorganization.

Q. Is a principal reason for that due to the—I will reframe the question: Is that the consequence of the figures which are shown on Sheet 1, of Exhibit 20? A. Yes, sir.

Q. In other words, the items on the subsequent sheets do not vary. It is only the earnings per share of stock which vary, is that correct? A. That is correct. If you will observe, Exhibit 19 showed an earnings per share of stock for the unification reorganization of $5.67. In the next twelve months, which are displayed on Exhibit 20, that increases to $8.30 a share. In contrast to that, Exhibit 19

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showed, for the independent reorganization, an earning of $2.93 per share, and Exhibit 20 shows that that has decreased in the succeeding twelve months to $1.99 per share.

Q. Do you know of any fairer way to test changes which have taken place since October 31, 1947, if there have been any? What the trend has been affecting the unification reorganization on the one hand, and the internal reorganization on the other? A. No, I do not. There has been considerable testimony offered here with regard to tremendously improved traffic conditions on the Florida East Coast as compared with the year 1940. But, all those things must inevitably simmer down into earnings and it seems to me that the finest answer is a comparison of earnings.

Q. In Exhibits 20 and 21— A. 19 and 20.

Q. 19 and 20. A. Yes.

Q. 19 and 20. Did you use the actual operating expenses of the two roads including the actual maintenance? A. Modified only to the extent that is shown on the notes on the statement, and those modifications, incidentally, operate to the disadvantage of the unification plan.

Q. One of them had to do with the Okeechobee Branch retirement? A. We eliminated that from the independent reorganization.

Q. Did you prepare another exhibit, entitled, "Comparison of Maintenance Expenditures in Relation to Total Revenues and Total Operating Expenses, Atlantic Coast Line versus Florida East Coast, Twelve Months Ended October 31, 1947", in order to trace the relative maintenance expenditures of the two roads in that period? Both as compared with their total operating revenues, and as compared with their total operating expenses? A. Yes, sir.

Q. From what sources did you get the data in that proposed exhibit? A. From the books of account and reports to the Interstate Commerce Commission.

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Mr. Bourne: We offer that in evidence.

. . . The instrument last above referred to was received and filed in evidence and marked Intervener Atlantic Coast Line Railroad Company's Exhibit No. 21.

By Mr. Bourne:

Q. Did you prepare a similar exhibit from the same sources with respect to the year ended October 31, 1948? A. I did.

Mr. Bourne: I offer that in evidence.

. . . The instrument last above referred to was received and filed in evidence and marked Intervener Atlantic Coast Line Railroad Company's Exhibit No. 22.

By Mr. Bourne:

Q. Now, without going into detail, Mr. Ormond, do those exhibits, the last two exhibits show, with respect to each of the two twelve months' periods, that percentage-wise, the Atlantic Coast Line Railroad Company spent more money for its maintenance than the Florida East Coast Railway, whether the percentage be that of operating revenue or operating expenses? A. That is correct.

Q. Putting the matter another way, do they show, for the twelve months ended October 31, 1947, and the twelve months ended October 31, 1948, a relative situation with respect to maintenance for which you undertook to make the adjustment on Atlantic Coast Line Exhibit No. 17, by bringing the Florida East Coast maintenance charges up to the level of the Atlantic Coast Line for the periods covered by that particular matter? A. Yes. These same periods are not covered in the other exhibit, because they relate to the split year. The latest available figures. Nevertheless,

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they apply the same situation, percentage-wise, that is applied there in dollars and cents.

Mr. Bourne: That is all.

Cross examination by Mr. Milam:

Q. Mr. Ormond, will you take up your Exhibit No. 17? A. I have it.

Q. You made a very heavy maintenance adjustment against the Florida East Coast of something over two and a half million in one year, and something over a million in another year, did you not? A. The larger figure for the year 1946 and the million dollar figure for the ten months of '48.

Q. Did you do so? A. How is that?

Q. Did you make these adjustments?

The Court: If you did so, answer.

A. Yes, sir.

By Mr. Milam:

Q. Your adjustments, for the Florida East Coast, Mr. Ormond, the East Coast income account, show an abnormal maintenance basis, do they not? A. To the extent of the Atlantic Coast Line maintenance, it is abnormal, yes.

Q. Did you testify it was abnormal? A. I said it was unusually heavy.

Q. Wouldn't it be fair to restate the claimed abnormal maintenance, abnormal expenses, to a normal basis? A. It would be more difficult. I doubt if it could be done, accurately.

Q. Well, going to Exhibit 17. You have a total income for F. E. C., per books of account, of $1,402,000.00 for ten months? A. Yes, sir.

Q. Then, you take a $1,026,000.00 off of that, and reduce it to $376,000? A. Yes.

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Q. Wouldn't it be fairer if you added the figure back into the F. E. C., and used the figure $1,402,000 for the F. E. C., and wouldn't you get a fairer comparison? A. I don't think so. I think it would be to a disadvantage, if that would be done.

Q. Why? A. You would have to develop an estimate and you would apply that estimate against $128,000,000 of Coast Line revenue, and then after applying your estimate against a low revenue on the one hand, against a high revenue on the other, and when you applied against the high revenue, you are going to produce a much larger adjustment.

Q. Then, when you take $1,026,000.00 off of $1,402,000, aren't you giving us an abnormally low revenue? A. No, I am not giving you any revenue at all.

Q. We are talking about net income. A. You mean net income?

Q. Yes. If you won't answer my question frankly, then, let me ask you another question. A. All right.

Q. Suppose the total income for the F. E. C. for those ten months in '48, was $1,026,320.00, and you apply against it, an abnormal maintenance cost of $1,026,320.00, there would be left zero revenue, would it not? A. Yes.

Q. Then, your estimate against the East Coast would be fantastic, would it not? A. Not for the purpose this exhibit is made for. All that I made the exhibit for is to put the two companies on the same basis as far as maintenance is concerned.

Q. All right. I think I made my point. You are familiar that in Mr. Lynch's Exhibit No. 27, he shows numerous adjustments of non-recurring items in the Florida East Coast's accounts, income account? A. Yes, sir.

Q. Not in detail. The only adjustment that you have made in any of your figures throughout was for abandonment of the Okeechobee Extension, is that correct?

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Mr. Bourne: Do you have Exhibit No. 27, Mr. Ormond? A. Yes, I have. No, I have made an adjustment in case of the Coast Line, and the only adjustment I have made in case of the East Coast on Exhibit 17,—that is what you are talking about?

Q. Yes. A. To purge the East Coast account of tax adjustments applying to other years, and to make this maintenance adjustment, is the only two I have made.

Q. Well, in fairness to you, all of the nonrecurring items mentioned on Exhibit 27, Lynch Exhibit 27, you have taken into consideration the abnormal non-recurring item of the abandonment of the Okeechobee Extension in two of your exhibits, there, have you not? A. Yes.

Q. I believe that you also, in setting up these figures in various of these exhibits, take into consideration, to the advantage of the Coast Line package of securities, some $418,500.00 savings, acquired from the unification of the two systems? A. That is correct.

Q. You are aware that in this Interstate Commerce Commission's report under consideration, they allowed no increase in compensation on that account, are you not? A. I don't know.

Mr. Bourne: I object to the question, as calling for a conclusion of the witness about the report.

The Court: You asked him what he knew.

Mr. Milan: If you will answer the question? A. I don't know, sir.

Mr. Milam: That is all.

The Court: Is there anybody else?

Cross examination by Mr. Russell:

Q. Mr. Ormond, as I understood your testimony, you think that the sufficiency of the financial support of the new securities proposed to be issued by the Coast Line under this proposed plan, is to be determined by the amount, not

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simply of the operating income of the Coast Line, but also its non-operating and investment income, is that correct? A. Yes. But, you said securities issued to the Coast Line.

Q. Securities issued by the Coast Line under this plan. That is your opinion? A. That is my opinion.

Q. Are you familiar with this language from the third report of the Commission, which reads:

"A considerable income, currently about $2,880,000.00 per year, is normally derived by the Coast Line from dividends on the stock which it owns of the L. & N. There is no assurance, however, that these shares of stock, constituting an unpledged asset of the Coast Line may not be sold in the future if the Coast Line so desires. Consideration of the sufficiency of the support for the new securities offered by the Coast Line in the event of merger should depend primarily on the operating results of the Coast Line."

Were you familiar with that statement when you testified as you did, a moment ago? A. Yes, sir.

Q. And did you recall that statement in the order of the Commission when you so testified? A. Yes, sir.

Q. Now, Mr. Ormond, assuming that there is a valuation of forty and one-half million dollars on the Florida East Coast Railway, and assuming that that is based upon $1,500,000.00 estimated normal earning power annually. That amounts to, if you break it down, a capitalization based on how much of earning power per $100,000? A. I haven't the faintest idea.

Q. Could you calculate it for me? A. I could.

Q. Would you do so, and tell me what it would amount to? A. What is the question now?

Q. I want to know how much of that forty and one-half million dollars, capitalization, would be assumed, or, how much of that forty and one-half million dollar capitalization would be assigned to every one hundred thousand dollars of

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estimated annual earnings if the estimated annual earnings are $1,500,000.00? A. I don't propose to sit here and make that calculation. If you will let me get down and get some papers, I will give it to you.

Q. Well, could you give, roughly, what it would be? A. No, I wouldn't attempt to do that, even.

Q. You couldn't give us a rough guess? A. I could.

Q. If I said it was $2,700,000.00 capitalization for every one hundred thousand estimated annual earnings, would you say that was about right? A. Not unless I verified it, no, sir.

Q. Now, Mr. Ormond, you are familiar with the third and fourth reports of the Commission? A. Reasonably.

Q. The figure of estimated prospective earnings of $1,500,000.00 for the Florida East Coast, upon which is based the forty and one-half million dollar capitalization, is that before taxes, and not after taxes, isn't that correct? A. I should say so, yes, sir.

Q. Well, do you know whether that is true or not? A. No, I do not.

Q. You think that is correct? A. I should say it would be, but, I don't know.

Q. Now, then, were you present when Mr. Lemmon testified at the hearing, at the opening of the hearings, November 6, 1947? I think it was——

Mr. Patterson: 1945.

By Mr. Russell:

Q. 1945, in Palm Beach? A. No.

Q. Have you read his testimony? A. Parts of it, yes, sir.

Q. Have you read that part of his testimony where he said that any fair and equitable plan of reorganization contemplated the merger of the Florida East Coast with the Atlantic Coast Line must yield to the Florida East Coast

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First and Refunding bondholders, their proper share of the savings from unification? A. I don't recall that statement. It might well be there, but I don't recall.

Q. Do you agree with that statement? A. I should think that would be reasonable, yes.

Q. Now, then, if, in taking the very figure that you used a moment ago, of your estimated savings, taking the mean between the $350,000 minimum and the million dollar maximum, $675,000.00 you have, and you should equally divide it between the Coast Line and the Florida East Coast, that would add about $340,000 a year to the estimated annual normal earning power of the Florida East Coast in this reorganization, wouldn't it? A. If you divide it that way, it would, yes. I wouldn't divide it that way.

Q. You wouldn't divide it that way? A. No.

Q. What would be the way that you would divide it? A. Well, I would divide it on the basis of the contribution of the two, to the unification.

Q. Now, were you present, or did you read the testimony of Mr. Lemmon who, as I recall, is vice-president of your railroad? Financial vice-president? A. Yes, that is correct.

Q. Who testified that it was impossible at that time to make a breakdown of those savings between the Coast Line and the Florida East Coast, but they would be substantial to both parties. Is that correct?

Mr. Bourne: That is not an accurate quotation of Mr. Lemmon's testimony, and I object to it.

Mr. Russell: What did Mr. Lemmon say?

Mr. Bourne: I can not tell, but I am positive he did not say that.

Mr. Russell: The record will show that.

Mr. Bourne: I object to you putting this question to the witness with reference to Mr. Lemmon's saying something he did not say.

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By Mr. Russell:

Q. Can the witness recall having read such testimony? A. I can't recall having read such testimony. If I did, I don't recall it.

Q. If we would assume, however, that there was an equal division, that would add about $340,000.00 per year to the normal earnings of a million, five hundred thousand dollars, and that would be before taxes, would it not? Would that not be correct? A. Before taxes, yes.

Mr. Russell: That is all.

Cross examination by Mr. Walton:

Q. In Coast Line Exhibit No. 19, on Sheet No. 5, at the bottom, where it shows the figure $31.27? A. Yes, sir.

Q. It is contemplated that forty-five thousand times that amount is to be paid, is it not? A. I should say so, yes.

Q. That is correct? Would you object to computing for me, what forty-five thousand times that is?

Mr. Bourne: I did not get that. Will you read it?

. . . The question was read.

Mr. Bourne: What sheet do you refer to?

The Witness: Sheet No. 5. (Calculating.) Forty-five thousand times $31.00?

By Mr. Walton:

Q. Yes, $31.27. A. That would be about $1,395,000.00, the way I make it. In that neighborhood. $1,406,000.00

Q. $1,407,150.00? A. Yes.

Q. Would you mind turning back now to Sheet 1, at the line, "Fixed and Contingent Charges"? A. Yes, sir.

Q. You will note there, under the F. E. C. independent reorganization— A. Yes.

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Q. —it shows right above that, "Income available for fixed charges, $1,560,275.00"? A. Yes, sir.

Q. Would you please subtract that from the $1,407,150.00? A. Yes. It would be $153,125.00.

Q. Now, on that basis, if the unification had been in effect in the twelve months ended October 31, 1947, the Coast Line would have received $153,125.00, which the bondholders would have received if it had been independently reorganized, is that correct? A. Yes. But, of course, that assumes that the dividends by the independent reorganization would be no larger than a four dollar dividend on the Coast Line.

Q. Yes, I put it on that basis. A. Yes, sir.

Mr. Walton: Thank you. That is all.

Re-direct examination by Mr. Bourne:

Q. Following Mr. Walton's questions, Mr. Ormond, in that same contingency, the present Florida East Coast owners would have had an approximately sixteen per cent interest in the equity of the unified Atlantic Coast Line-F. E. C. system, would they not? A. Definitely.

Q. And they would have had a sixteen per cent interest in everything earned by the Atlantic Coast Line securities and not distributed in dividends, would they not? A. They would.

Q. Now, Mr. Russell asked you some questions with respect to the million, five hundred thousand dollar estimate. Had you prepared for this hearing, to give any testimony on that subject? A. No, sir.

Q. Have you any present recollection as to whether that estimate in the Commission's report was before or after taxes? A. It was my impression that it would normally be before taxes, and I couldn't say definitely, and I so told him.

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Mr. Bourne: I would like to ask one question which is not re-direct, your Honor, which I forgot on my direct examination, if there is no objection.

The Court: All right.

By Mr. Bourne:

Q. You mentioned that Exhibits 19 and 20 did not, either of them, take into account the Atlantic Coast Line cash contribution of $4,125,000.00, did you not? A. Yes.

Q. Did they in any way reflect the calibre of the securities provided for by the two plans? By that, I mean, did they take into account that under the Commission's plan first mortgage bonds would be issued with fixed interest, whereas under the alternative plan there would only be income bonds? A. That fact is not given any recognition whatever.

Q. In other words, one hundred dollars received as income on a fixed interest bond is treated as being no more valuable than one hundred dollars received on an income bond, irrespective of the assurance of the return? A. Exactly.

Mr. Bourne: That is all.

Re-cross examination by Mr. Russell:

Q. Mr. Ormond, you say that under the plan of reorganization, the Florida East Coast bondholders would have a sixteen per cent interest in the Coast Line system, is that right? A. I do not use the figure "16", as being exactly correct, but it is right close to that, but, isn't quite that.

Q. I thought Mr. Bourne used the figure, about sixteen per cent? A. He used the figure sixteen per cent.

Q. So that when all of this is over, and when all of the reports of earnings are in, the total, according to your testimony, the Florida East Coast bondholders will share six-

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teen per cent, and the present stockholders of the Atlantic Coast Line Railroad about eighty-four to eighty-five per cent, is that right? A. That is correct.

Q. Now, as a matter of fact, Mr. Ormond, ninety thousand of the one hundred and fifty thousand shares of stock to be allocated to the Florida East Coast bondholders is preferred stock, is it not? A. Yes.

Q. And that preferred stock is entitled only to one hundred dollars in liquidation, isn't that right? A. I am not sure what the liquidation provisions of it would be.

Q. That is all right. Now, then, as a matter of fact, it is callable at any time at one hundred dollars per share, isn't that right? A. That is true, by payment of accumulated dividends.

Q. So that that preferred stock which represents 3/5 of all the A. C. L. stock to be allocated to the Florida East Coast Railroad, is limited in the amount in which it can share in any equity of the A. C. L. earnings, isn't that correct? Being preferred stock? A. Wait a minute. Not as to earnings. Not as to dividends.

Q. Well, let us change the question, then. That is not a right that could be exercised against the will of the other stockholders, because that preferred stock is callable at any time, limiting their participation to one hundred dollars a share, isn't that right? A. It is callable, yes.

Mr. Russell: That is all.

Mr. Bourne: Are there any further questions?

. . . To which inquiry there was no response.

Mr. Bourne: That is all, Mr. Ormond.

(Witness excused.)

Mr. Bourne: Your Honor, that is all I have, except to read excerpts from Mr. Ball's deposition and to refer to an offer such of the documents as Mr. Patterson produced

as I wish to offer. I have not had a chance to see all of those.

The Court: Is there anybody else that has any witnesses? We will go through with the witnesses.

. . . To which inquiry there was no response.

The Court: There is no further oral testimony?

Mr. Patterson: I beg your pardon?

The Court: I asked if there was any further oral testimony by anyone?

Mr. Patterson: We would rather wait for Mr. Bourne to finish.

The Court: He said he was through until he looks over the documents you gave him.

Mr. Patterson: He said he wanted to read Mr. Ball's deposition.

The Court: Well, he can read it.

Mr. Milam, I expect it has been proven, but, what about the Lynch interests? Is Lynch a corporation, or name, or what? I know there is such a name.

Mr. Milam: They are denominated here, your Honor, as S. A. Lynch and Associates. It includes S. A. Lynch personally, S. A. Lynch Corporation, and several other associated people who are stated in the record.

The Court: What par value of bonds do they control or represent?

Mr. Milam: The last information I have had, it is something over three million.

The Court: That is in the record somewhere?

Mr. Milam. Yes, it is in the record.

Mr. Bourne: Now, I am reading from the deposition of Mr. Ball, commencing on the 9th day of November, 1948. I am reading from the examination beginning on page 4, line 5:

"Q. Mr. Ball, will you please give the reporter your name and address? A. My name is Edward Ball, and I reside in Leon County, Florida.

"Q. In what town or village in Leon County? A. A short distance outside of Tallahassee.

"Q. Within the city of Tallahassee? A. No, outside of the city.

"Q. And what is the name of the place? A. Well, it is in the country.

"Q. Has it got no name? A. I think it is called Southwood.

"Q. Is it in a township? A. If it is, I don't know what township it is in.

"Q. How long have you resided there? A. Since last spring.

"Q. Are you the Edward Ball, who is one of the Trustees of the Trust under the Will of Alfred I. duPont? A. Yes, I am.

"Q. Are you an officer of the St. Joe Paper Company? A. I am.

"Q. What position do you hold? A. President.

"Q. Are you also a director? A. I am.

"Q. Are you an officer of any other corporation which is controlled, directly or indirectly, by the Trustees of the Will of Alfred I duPont or the St. Joe Paper Company? A. Yes, I am. Several."

And then:

"Q. Is that the Florida National Bank at Orlando? A. No, the Florida Bank at Orlando. I think that is all I can recall."

"Q. What is your position with the Appalachicola and Northern Railroad? A. President and Director."

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"Q. By 'director', you mean one of the Board of Trustees, or is there a director of the Foundation? A. No, I am one of the board of directors, or Trustees."

• • • • • •

"Q. How many Florida East Coast Railway Company First and Refunding Mortgage bonds are now owned by the St. Joe Paper Company? A. $23,259,000.00 par value."

• • • • • •

Skip a question and answer:

"Q. On November 26, 1945, you testified, did you not, that the St. Joe Paper Company owned $25,000,000.00? A. I think that is correct.

"Q. Did the St. Joe Paper Company subsequently sell $1,741,000.00? A. Yes.

"Q. To whom did they sell them? A. They sold them to Clyde C. Pierce, who in turn sold them to the Estate of Alfred I. du Pont."

• • • • • •

Skip two questions and two answers.

"Q. Was that made in a single sale or a series of sales? A. One sale.

"Q. When did that take place? A. I can not recall the month. It may have been this year, or it may have been the latter part of last year. I think it was this year."

• • • • • •

The next is page 41, line 5:

"Q. Now, will you answer the question, please?

"Mr. Bourne: Will you read it again, Mr. Reporter?

". . .The question was read, being in figures and words, following:

" 'Q. In your opinion, is the plan which the Commission has approved more favorable to the holders of the First

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and Refunding Mortgage bonds than the plan of the Atlantic Coast Line? Which the Atlantic Coast Line has proposed?'

"By Mr. Bourne:

"Q. If you please, you can change that, and say, 'is it less favorable'? Is the plan which the Commission has approved, less favorable to the holders of the First and Refunding Mortgage Bonds than the plan which the Atlantic Coast Line has proposed? A. I have not evaluated the differences between the plan as originally proposed by the Coast Line and the one approved by the Commission, to give an answer.

"Q. You have never done that? A. I have read that plan and read the Commission's, but I don't remember the differences in the two.

"Q. Have you ever analyzed the two on a comparative basis and formed an opinion as to which of the two is the more favorable or less favorable? A. No, I have not."

* * * * * *

Page 54, Line 13:

"Q. Is it your testimony that it would not be informative to see how the two plans would have worked out, if, or the hypothesis, first, that the Commission's plan had been put into effect two years ago, and then on the hypothesis that the plan of January 8, 1945, had been put in two years ago? A. It might be informative as to how much the A. C. L. would have benefited thereby.

"Have you attempted to make any test of that? A. No, I have not".

* * * * * *

Now, page 60, line 12:

"Q. Who owns the home that you now occupy near Tallahassee? A. That is owned by the St. Joe Paper Company.

BLEED THROUGH

"Q. What is the name of the place? A. Southwood.

"Q. Well, hasn't the particular property got a name? A. That is the name of the particular—a part of the particular property.

"Q. How big is it? A. Southwood? The acreage there?

"Q. Yes. A. I don't know about the acreage. The acreage with that piece of property is 1700 acres. I only occupy a part of the house.

"Q. —part of the house? A. That's right.

"Q. And who occupies the rest of the house? A. Any of the officers and some of the employes of the St. Joe Paper Company, when they are there.

"Q. When did the St. Joe Paper Company buy the property? A. When did they buy it?

"Q. Yes, sir. A. I think they bought it either the latter part of 1947 or the early part of '48.

"Q. How much did they pay for it? A. My impression is that for that property they paid $90,000.00."

• • • • • •

"Q. What is your arrangement with St. Joe Paper Company, with respect to the occupancy of the house? A. Well, my arrangement with the St. Joe Paper Company is that I am residing there and we are building an office immediately adjacent to the house—when I say immediately adjacent, it may be seventy-five or one hundred feet from the house. We are going to move a good part of our office personnel and that will be one of the offices of the St. Joe Paper Company. Any of the officers and directors, and some of the employees that are there, will occupy the balance of the house.

"Q. Have you a lease on the space that you occupy? A. No, I have no written lease. The company just agreed that I should occupy one of the rooms, and I moved in and I have been there ever since."

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The next is on page 70, line 14:

"Q. Does the Florida National Group of Banks, at present, consist of the following: Florida National Bank of Jacksonville, Florida Bank and Trust Company at Miami, Florida National Bank at St. Petersburg, Florida National Bank at Pensacola, the Florida Bank at Orlando, the Florida Bank and Trust Company at West Palm Beach, the Florida Bank and Trust Company at Daytona Beach, the Florida National Bank at Lakeland, the Florida National Bank at Coral Gables, the Florida National Bank at Key West, the Florida National Bank at Bartow, the Florida Bank at Gainesville, the Florida National Bank at Ocala, the Florida National Bank at Fernandina, the Florida Bank at Fort Pierce, the Florida National Bank at Belle Glade, the Florida Bank at Starke, the Florida Bank at Madison, the Florida Bank at Chipley, the Florida Bank at Port St. Joe, and the Florida Bank at Bushnell? A. Yes, sir. All those are members of the Florida Group. Now, Mr. Reporter, what was the question? It may not be a complete answer.

"... The question was read to the witness.

"A. There is an additional bank in the group now. Its name is 'The State Bank at DeLand', I think.

"Q. Florida State Bank in DeLand? A. No, the State Bank of DeLand."

* * * * * *

On page 72, Line 10:

"Q. Mr. Ball, wouldn't you like to be, yourself, Chairman of the Board, or President of the independently reorganized Florida East Coast? A. Not particularly, Mr. Bourne.

"Q. Have you had any plans in that direction? A. No, I wouldn't say I have any plans. A good many years ago I was thinking about it, but I am getting so old now that

BLEED THROUGH

even if it were independently organized—reorganized, I don't know that it would appeal to me.

"Q. In 1945, you made an effort, did you not, together with others, to get control of the Atlantic Coast Line Railroad Company? A. Yes, we were party to a group that was figuring on it.

"Q. In your testimony in 1945—I withdraw that. Who do you mean by 'we'? A. Well, I believe that that was the Alfred I. duPont Estate that was figuring on participating in that.

"Q. Can I take that to be a definite statement, or just your present belief? A. No, that is right. That is, the Estate was figuring on participating with that group.

"Q. How much was the participation? A. I don't recall at this time, Mr. Bourne. We talked with various people and at different times it looked like it might have been a different amount.

"Q. Well, the final offer was $13,800,000.00, isn't that correct? A. I expect that is correct.

"Q. Well, what was the participation of the Alfred I. duPont Trust in that? A. I don't recall.

"Q. You don't recall at all? A. No, I don't recall what their participation would have been in that offer.

"Q. Would you please look that up and be prepared to testify? A. Mr. Bourne, I don't think I kept any records on what the final participation would have been.

"Q. Was that done by action of the Trustees? A. Not as to the amount. We negotiated and the most of those negotiations were oral. They were never put down as to the amount that the different ones in the group would take.

"Q. Would you please produce any minutes of the Alfred I. duPont Trustees relating, directly or indirectly, to the transaction or proposed transaction set forth in Exhibit No. 239, before the Interstate Commerce Commission"?

Mr. Bourne: Since those are introduced, I think I could skip from there on.

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Now, page 76, Line 14:

"Q. What was the actual spread, if you remember, between the market price of the stock of the Atlantic Coast Line Company of Connecticut on April 19th, 1946, the date of the offer, contained in Exhibit No. 239, and the price of $100 a share contained in the offer? A. I do not remember.

"Q. Well, you know there was a spread, don't you? A. Yes, sir. I know that it was not selling at $100 a share.

"Q. And, don't you know that it was a pretty big spread."

The Court: What stock is that?

Mr. Bourne: Atlantic Coast Line Company of Connecticut.

Continuing the quotation:

"Q. And don't you know that it was a pretty big spread? A. I am inclined to think it was a substantial spread."

Mr. Patterson: If your Honor please, I made no objection to the reading of this, but this is the same kind of testimony your Honor refused to let me put in. This all involves various negotiations on the plan——

The Court: You mean, what he has read?

Mr. Patterson: All of it. Practically everything in this deposition, it all relates to Mr. Ball and about negotiations and matters outside of this plan. The transactions that have some signficance to Mr. Bourne's side, and his criticism of Mr. Ball's action, but no more so than the testimony that related to—the testimony by Mr. Davis and Mr. Butler, and my criticism of that.

The Court: You do not seem to care how big you are making the record. I am trying to hold it down. What is the purpose?

Mr. Bourne: We have had a very extended deposition and I have been over it carefully, and I am taking out a small part.

BLEED THROUGH

The Court: He was ambitious and tried to get the Coast Line?

Mr. Bourne: That is right. And he has made no study of the plan, and that he has used his position as a Trustee, for power and for money, and that is the basis——

The Court: I do not know as we can indict him for that.

Mr. Bourne: Here is a charitable trust. He is a trustee.

The Court: I will let it in. I do not know as it will help much.

Mr. Bourne: I have tried to do it in the most abbreviated manner.

The Court: I know you have.

Mr. Patterson: If this testimony comes in, I think my testimony should come in, too.

The Court: I do not think I will pay attention to either one of them.

Mr. Patterson: All right.

Mr. Bourne: The next page is No. 84, Line 18:

"Q. Would you accept my statement that the Commercial and Financial Chronical shows that during the month of April, 1945, the low price for Atlantic Coast Line Company stock was '74' and the hight price was '79¾'? A. Yes, I would accept that statement, Mr. Bourne, and I also seem to recall at West Palm Beach—that was in '45, was it not?"

Page 86, Line 6:

Mr. Patterson: That was not exactly the answer.

Mr. Bourne: You can finish it.

Mr. Patterson: The burden is on you.

Mr. Bourne: You can read the answer. I will not object.

The Court: Read it so I can see what it is.

Mr. Bourne: It goes on at length.

Mr. Patterson: No, three or four lines.

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"A. Yes, I would accept that statement, Mr. Bourne, and I also seem to recall at West Palm Beach—that was in '45, was it not——"?

"Q. Yes. A. —of hearing you rather loudly proclaim the price of Atlantic Coast Line Railroad stock as being either seventy-four dollars or seventy-six dollars a share as of that day or the day before, and I noticed in the press recently that it wasn't anywhere near that high now."

Mr. Bourne: Page 86, Line 6:

"Q. What other reason did you go with them for? A. Well, one of them was that if we acquired the Coast Line, we would get rid of this row about the Coast Line taking over the East Coast. That was one of the considerations on my part, and we were going to have the East Coast—when I say 'we', I am referring to the Five Per Cent Bondholders—we were going to have the Florida East Coast and reorganize it as we started out to do, and as the Commission, on January 8th, 1948, said we should do."

Mr. Bourne: It should be '45. It was a typographical error, and we agree it should be '45.

Page 118:

"Q. Do you know if there have been any relations or transactions between the duPont Objectors and Doctor Snyder? A. Yes, I think Doctor Snyder did business with the Florida National Bank and Trust Company. I am quite sure that he does now."

Mr. Bourne: He is one of the Claughton group.

The Court: Yes, in Miami.

Mr. Bourne: (Continuing):

"Q. Do you know whether he has any loans there? A. I don't think he has, at present. I know that he has had in the past.

BLEED THROUGH

"Q. Do you know what the collateral has been? A. I think part of it might have been Florida East Coast bonds.

"Q. What is the latest information you have on that subject? A. Well, I don't know that I could even estimate it. But, Doctor Snyder was a customer of the bank and I assume he is today."

Mr. Bourne: Page 119, Line 9:

"Q. Who is O. A. Statler? A. Why, I believe he is a member of a family that the Statler Hotels are named for?

"Q. Do you know where he lives? A. I think he lives in Miami.

"Q. Do you know whether there have been any relations or transactions between any of the duPont Objectors and Mr. Statler? A. Yes, sir, I think Mr. Statler is a customer of the Florida National Bank and Trust Company.

"Q. At Miami? A. At Miami.

"Q. Do you know whether he has borrowed from this bank? A. I think so.

"Q. Do you know what his collateral has been? A. I think he had some Florida East Coast bonds, and he may have had other collateral.

"Q. Do you know the present status of his loans? A. No, sir, I do not."

Mr. Bourne: The next is page 134, a little below the middle of the page, Line 15:

"Q. Mr. Ball, do you know A. W. Corbett? A. I have met him.

"Q. Do you know whether he has had any relations or transactions with any of the duPont Objectors? A. Yes, I think he is a customer of the Florida National Bank and Trust Company at Miami.

"Do you know whether he has any loans there? A. I think he has.

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"Q. Do you know whether they are secured by the pledge of F. E. C. bonds? A. I think they are partially, if not wholly secured by F. E. C. bonds."

Mr. Bourne: At page 143, Line 10:

"Mr. Bourne: Will you kindly produce a statement or state for the record, how much was paid by the Florida National Building Corporation, or the St. Joe Paper Company, for the twenty-five million dollars of First and Refunding Mortgage bonds which were owned at the time of the West Palm Beach hearings in 1945, by the St. Joe Paper Company?

"Mr. Patterson: We make the same objection, as being immaterial. The question was first presented at the hearing in 1941, and again—I am not sure, it may have been 1944—but it was presented and argued in West Palm Beach, before the Examiner, and neither the Examiner nor the Commission required us to answer it, and no party to the record presented that question to the Commission for a ruling.

"Under the circumstances, I am of the opinion that it is not necessary and it is not material to this record, and the question asked is purely ulterior to the case. We will produce the information at any time that the Court holds that this is proper information or at any time that all of the other bondholders furnish the same information".

Mr. Bourne: Now, page 147, Line 10:

"Q. Mr. Ball, suppose you state in the record the companies that are controlled directly or indirectly by the Trustees of the duPont Trust or the St. Joe Paper Company, of which you are an officer or president.

"Mr. Patterson: President? That is all that we have on this list. A. All right. St. Joe Paper Company. St. Josephs Land and Development Company. St. Joseph Telephone and Telegraph Company. Port St. Joe Terminal Company. Port St. Joe Dock and Terminal Railway Company.

BLEED THROUGH

"Q. You referred, before, to St. Joe Dock and Terminal Company. We had better consider that as covering those two, these that have been named Port St. Joe. A. That is correct. Jacksonville Properties Inc., Herring-Hall-Marvin Safe Company. Hall Safe and Equipment Company, Appalachicola Coal & Northern Railroad Company. All of those companies are controlled by the duPont Estate or the St. Joe Land and Development Company and St. Joe Paper Company. Now, do you desire the others?

Q. Please. These are companies controlled by you, personally? A. Yes, that I am interested in. Wakulla Edgewater Company, Hotel Markham, Inc., Almours Securities, Incorporated. Gulf Shores Utility Company. That one, I had forgotten."

Now, page 150, the following table of "salary of Edward Ball", as President of St. Joe Paper Company:

"Salary Per Year		Bonus	Total
1945	$30,000	$3,000	$33,000
1946	$33,750	$5,062.50 (15 per cent)	$38,812.50
1947	$40,050	$8,010 (20 per cent)	$48,060
1948	(Jan.-Oct.) $34,500"		

Mr. Bourne: Page 153, Line 9:

"Q. What does Mr. Elbert Dent do? A. I really don't know. Mr. Dent lives in Wilmington, Delaware, and he, I believe, is interested in various businesses, but what they are, I am not sure. He is a trustee of the duPont Estate. He is a director of the St. Joe Paper Company, and he attends the meetings of the Trustees and the St. Joe Paper Company. He takes a very active part in the discussions.

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"But, you don't know anything about his—? A. His personal affairs.

"Q. —business affairs? A. All I know about his business affairs is that I have heard him talk about a paint company. Now, I don't even know the name of the company. During the war, he was Delaware state manager of the Smaller War Plants Corporation. But, Mr. Dent hasn't seen fit to tell me about his personal affairs and I certainly have not asked him about them".

Page 159, Line 13:

"Q. That was only a preliminary question, Mr. Ball. How much has the St. Joe Paper Company invested in the State of Florida since the time when you testified? A. In 1945? Mr. Bourne, I can not give you that accurately, but it is several millions of dollars. Probably three or four or five."

"Mr. Bourne: This is another answer by Mr. Ball, which contains something that I want to have in the record, and Mr. Patterson does not object to the reading of the addition to one of his answers:

"A. And by the way, Mr. Bourne, I would like to correct a portion of my testimony of yesterday where I said that I thought I owned about forty-five hundred shares of St. Joe Paper Company. I think I got that figure from some of your statements at West Palm Beach. I find it is an error. I have four thousand and——

"Mr. Russell: And eleven shares is correct.

"A—and eleven shares."

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Page 199, fourth line:

"Q. What does the Gulf Shores Utility Company do? A. The Gulf Shores Utility Company has a sewage disposal plant.

BLEED THROUGH

"Q. Where? A. In West Florida.

"Q. How big and where is that? A. The Gulf Shores Utility Company? Well, I believe that the sewage disposal plant, it seems that one of the men who had a good deal to do with the organization of it, told me, I think, that it cost $150,000. And, in spite of the fact that I am president, I don't know, because I was not president at the time that they constructed the sewage disposal system.

"Q. Whereabouts on the West Coast is that? A. It is a little west of Panama City."

• • • • • •

And, on page 230, line 14:

"Q. All right. Now, I show you the supplement to the petition for modification, reconsideration of the third supplemental report, reopening and reargument, before the entire Commission, on behalf of St. Joe Paper Company, intervener, dated July 18th, 1947, and I quote from page 63, as follows:

" 'Assuming that the Coast Line could eliminate the entire general office staff and assistants, which obviously it could not, the maximum possible saving which could be attained, would be about $370,000, without taking into consideration, however, the loss in efficiency to these economies which would follow the elimination of this necessary suspension.'

"A. Mr. Bourne, I am not trying to state St. Joe's position. I was trying to state the impression I had of what the Coast Line's position had been.

"Q. No, I asked you another question: Whether the St. Joe Paper Company's position had been changed, and you first asked me to inform you what the position was before, and I am doing so by calling your attention to that document, and my question is, whether it is still the position of St. Joe Paper Company, or whether that position has been changed? A. (Reading from document referred

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to, page 63.) No, as far as I know, that position has not been changed."

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The next is page 232, line 8. This is the last, your Honor.

"Q. There was one subject I inadvertently omitted, Mr. Ball, in talking about a comparison of the two possible types of plans. Do you agree with the statement in the Commission's report of April 8, 1947, Florida East Coast Railway Company reorganization 267 I. C. C. 295, at page 321, which I will quote:

" 'The Coast Line has effected in the last few years a really outstanding improvement and rehabilitation of its roadbed and other properties, including, as to equipment, the purchase of 53 Diesel road passenger units, 36 Diesel road freight locomotives, 52 lightweight passenger-train cars and 11,776 freight-train cars.' "

"A. Mr. Reporter, would you read the first part of the question, please.

". . . The portion of the question requested, was read to the witness.

"A. I have no reason to doubt the accuracy of that statement, why the Coast Line only has 53 passenger Diesel units. I think the Florida East Coast has only 21 or 23, which, for the length of its mileage——

"Q. Do you know how many—? A. —in comparison would be much smaller—I mean, a much greater number of Diesels per mile——.

"Q. That statement was made, Mr. Ball in the Report of April 8, 1947, based on the record which was before the Commission at the time. Do you know how many Diesel units the Atlantic Coast Line has got now? A. I do not."

Mr. Bourne: Now, I will skip over the next page. Page 234, Line 8:

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"Q. Do you or do you not agree with the Commission's characterization? A. I don't express any idea on that. I agree that that is what the Commission said about it. Now, whether the Coast Line has done an outstanding job or not, I am not qualified to say. I haven't looked over the utility.

"Q. You spoke about the rail program on the Appalachicola and Northern? A. Yes, sir.

"Q. What weight rail were you putting in? A. We are putting in ninety pounds.

"Q. And what weight rail is the Atlantic Coast Line putting in? A. I don't know and when I say we are putting in ninety pound, that is all we need. We are replacing sixty and sixty-five pound rail.

"Q. Do you know whether or not the Atlantic Coast Line has put in over a thousand track miles of heavy rail since late in 1943? A. That would be about 22 or 23 per cent of their total mileage, wouldn't it, Mr. Bourne?

"Q. I asked you the question. Would you please answer it? A. No, I don't know it, but if you say so, I am perfectly willing to accept it.

"Q. You don't know what weight rail that is that I am referring to, do you? A. I do not.

"Q. What is the weight of the rail on the main line of the Florida East Coast? A. The new rail that they have been putting in, and I understand that the re-laying program is about 70 per cent completed, I believe is what Senator Loftin told me, and the weight of that rail is 112 pounds. The new rail.

"Q. Have you any idea of the relation of the weight of that rail to the weight of the rail on the Atlantic Coast Line that I have referred to as having been put in in over a thousand track miles? A. No, but I assume the Atlantic Coast Line rail is heavier, from your question, and I would think it should be because they carry a great deal heavier traffic. When I say 'heavier traffic', I mean by that heavier traffic than the Florida East Coast, and, also, traffic on

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the Florida East Coast is traffic consisting of, in a large measure, agricultural products and those trains are not particularly heavy.

"Q. In connection with the rehabilitation program of the Atlantic Coast Line, carried on since late 1943, there were a large number of crossties that have been installed. Do you know whether the number is more than two million or more than five million or ten million or more than fifteen million? A. Mr. Bourne, I know nothing of the number of crossties that the Coast Line has put in, in their rehabilitation program. I am not familiar with their rehabilitation program.

"Q. Do you know anything about the amount of ballast that has been put in? A. I have just said that I knew nothing of their rehabilitation program. I know nothing of the amount of ballast that they have put in."

Mr. Patterson: You do not want to read the next question?

Mr. Bourne: That is all I have, your Honor, except that I haven't had a chance to see these other documents. I do want to introduce what Mr. Patterson produced. I think I could perhaps do that all at one time, better than do it piecemeal.

Mr. Patterson: Have you got the minutes of the Trustees' meetings and the minutes of the stockholders?

Mr. Bourne: The written list of stockholders.

Mr. Patterson: The other documents, I have been waiting on for three hours. Do not criticize me. They have had to dig them out and sort and copy them.

The Court: Do you want some time to look them over, Mr. Bourne?

Mr. Bourne: Yes, if I can see them, of course, first. I have not seen them.

The Court: Do you want some time?

Mr. Bourne: Yes.

The Court: Is there anybody else that could consume some time?

BLEED THROUGH

Mr. Patterson: Mr. Russell has gone to get them.

Mr. Milam: He has gone to the hotel.

Mr. Patterson: I ha[illegible]en't had a chance to check with Mr. Bourne. He went so rapidly. There is so much in here, that I do not know. Most of what he read was already in the record.

The Court: Here comes a man with something now.

The Clerk: That is Mr. Russell.

Mr. Russell: I understand, your Honor, that the papers are on the way over. Someone told me that in the hall. I had to get another record.

The Court: If there is nothing else that we can do, we can rest a few minutes.

> . . . And thereupon an informal recess was had, and thereafter the following further proceedings being had:

The Court: You may be seated.

Mr. Russell: Are you through?

Mr. Bourne: I am through with the exception of marking such documents as I want to mark, after I get those that I requested.

Mr. Patterson: Here (tendering counsel documents).

Mr. Bourne: I take it that there are no minutes of the executive committee or the board of trustees of St. Joe Paper Company relating to the Florida East Coast reorganization at any time subsequent to November 24, 1944. Is that correct?

Mr. Patterson: None that I find.

Mr. Bourne: I think I am entitled——

Mr. Paterson: I can not make any further statement than that. I made the request for the information and that is all that has been furnished to me. That is all I can go by. I have looked over the printed reports of every year from 1942 to date, as far as the stockholders are concerned. I have looked those over and that is the only one I find that has any reference.

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Mr. Bourne: You have personally examined——

Mr. Patterson: The printed reports. There was no report for one year, but the other years I looked at the printed reports but find no reference in there relative to the Florida East Coast Railway.

Mr. Bourne: The other orders were not printed?

Mr. Patterson: I don't know. I understand one year there were no formal reports made. Some were made by Mrs. du Pont and some by Mr. Ball, and no reference is in Mrs. du Pont's or Mr. Ball's reports to the stockholders' meeting, except this that I gave you.

Mr. Bourne: Except at the stockholders' meeting?

Mr. Patterson: I mean, to the stockholders.

Mr. Bourne: You have personally examined the reports of the St. Joe Paper Company to the stockholders and you state there are no references therein to the Florida East Coast Railway reorganization?

Mr. Patterson: That is correct. I went through the minute book some months ago and picked those out. Those are the only ones with the exception of the ones I have given you.

Mr. Bourne: Relating to the Florida East Coast Railway?

Mr. Patterson: Relative to the $1,700,000 transaction.

Mr. Bourne: I have no record of those you gave me.

Mr. Patterson: Mr. Russell will bear me out on that. We gave you those after lunch. Mr. Main came in and we gave them to you, and at the same time you will find, subsequently, in there, where we didn't have the other one.

Mr. Bourne: There were some things relative to the sale of $1,700,000 of bonds?

Mr. Patterson: We furnished that.

Mr. Bourne: I further asked you for the other minutes.

Mr. Patterson: There are no other minutes.

Mr. Bourne: Of the executive committee of the St. Joe Paper Company, relative to the Florida East Coast Railway?

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Mr. Patterson: There are no minutes of the executive committee.

Mr. Bourne: You state that the executive committee or board minutes show no action subsequent to November 27, 1944, except with respect to the sale of $1,700,000 of bonds?

Mr. Patterson: So far as I have stated.

Mr. Bourne: You have personally examined them?

Mr. Patterson: Yes. These are the only documents that answer any description of any request that you have made, that you have not already been furnished with, aside from those that I have not furnished you.

Mr. Bourne: Can I be excused for a short time, your Honor?

The Court: Yes.

Mr. Bourne: Now, that is all I have.

The Court: Does anybody else have anything?

Mr. Russell: Yes, your Honor, we wish to call one witness. Call Mr. Main.

Mr. Roger L. Main, having been produced and first duly sworn as a witness on behalf of St. Joe Paper Company, testified as follows:

Direct examination by Mr. Russell:

Q. Will you state your name and address for the record? A. Roger L. Main, 1514 Barnett Building, Jacksonville, Florida, residence, San Jose Boulevard, Jacksonville, Florida.

Q. What connection, if any, do you have with the St. Joe Paper Company, the intervener in this proceeding? A. I am a director and member of the executive committee and the treasurer of St. Joe Paper Company.

Q. Approximately what amount, face value, First and Refunding Bonds of the Florida East Coast Railway

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Company are owned by St. Joe Paper Company? A. $23,259,000.00.

Q. That is slightly over fifty per cent of all of the authorized issue, is that correct? A. That is correct.

Mr. Russell: Now, your Honor, the purpose of the next question is to——

The Court: Twenty-two or twenty-three?

A. $23,259,000.00.

Mr. Russell: The purpose of these questions is to direct your attention, the attention of the witness to such testimony that was offered with reference to the alleged value of the common stock of the reorganized Florida East Coast Railway Company, and its acceptability as an investment or purchase.

By Mr. Russell:

Q. Mr. Main, I want to ask this question: If that plan of reorganization was promulgated, the terms of which, assuming the valuation fixed for reorganization purposes as permissive capitalization, was forty and one half million dollars, and there would be given to each First and Refunding bondholder in the ratable proportion that his ownership of bonds bore to that amount of common stock, that is to say, for every one thousand dollar bond, assuming that this common stock was of a par value of one hundred dollars, each bondholder would receive nine shares of common stock, with the added proviso that in the event any First and Refunding bondholder objected to accepting, either in whole or in part, such common stock, that such First and Refunding bondholder should receive, if he wished, as bonds, a bond in the amount of nine hundred dollars, carrying a four per cent interest rate, and fully secured as to both principal and interest by a mortgage over all of the property of the Florida East Coast Railway, or, if the bondholder wished to take one-half stock and one-half bonds, would the St. Joe Paper Company

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accept, for its bonds, all common stock under such a reorganization plan? A. The St. Joe Paper Company would accept all common stock for its bondholdings under such a plan.

Mr. Russell: That is all.

Cross examination by Mr. Bourne:

Q. Mr. Main, has the action that you say the St. Joe Paper Company would take, been authorized by the board of directors of the St. Joe Paper Company? A. The St. Joe Paper Company, in executive committee meeting this morning,—no, pardon me. After the recess, passed on this proposal and unanimously adopted it. At that meeting, there were three directors present who were not members of the executive committee, and who also approved this plan. That would have made a majority of the board of directors. The board of directors has not had an opportunity to take formal action.

Q. Has the action of the executive committee been reduced to writing in minutes? A. It is being reduced to writing now and can be made available.

Q. Was a proposal made by Senator Byrnes at the argument in January, 1948? Were you present at that argument? A. I was not present, but I am familiar with the proposal.

Q. Was that authorized by the Board of Directors of St. Joe Paper Company? A. I don't believe there was any formal action of the board of directors taken on that proposal.

Q. Was any taken by the executive committee? A. I don't recall. I recall it was informally discussed in Washington by several directors and the trustees.

Q. Did you hear Mr. Patterson's statement that there were no minutes of the executive committee or the board since November 27, 1944, containing any reference to the Florida East Coast Railway reorganization? A. I heard

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Mr. Patterson's statement, and I am sure Mr. Patterson knew nothing of this meeting this afternoon.

Q. Well, are you secretary of St. Joe Paper Company? A. No, sir, I am not. I am secretary of the executive committee and treasurer of St. Joe Paper Company.

Q. And is it your recollection that the executive committee's minutes contain no reference to the Florida East Coast Railway Company since November 27, 1944? A. That is my recollection with the exception of the sale of some bonds.

Q. And it is your recollection, as a director, that the minutes of the Board contain no references to the Florida East Coast Railway Company. A. I think you have before you all the references in the trustees' meetings.

Mr. Patterson: Mr. Bourne, I do not say that it is not in there. I furnished you a copy of it.

Mr. Bourne: I am excepting the sale of $1,700,000 of bonds. I distinguish between that bond transaction and the reorganization proceedings.

The Witness: And the what?

By Mr. Bourne:

Q. I am distinguishing between that bond transaction and references to the reorganization proceedings. A. Let us get your question straight now, Mr. Bourne?

Q. Have you any recollection of any references in the minutes of the executive committee or the board, subsequent to November 27, 1944, relating to the Florida East Coast reorganization proceedings— A. I think there was one——

Q. You asked me for the question. Let me finish. A. Pardon me.

Q. Have you any recollection of any references in the minutes of the executive committee or the board, subsequent to November 27, 1944, relative to the Florida East Coast Railway reorganization proceedings, other than the action authorizing the sale of $1,740,000 of bonds? A. No,

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those are all that I know of. I am confident there were no others.

Mr. Bourne: That is all.

Mr. Russell: That is all. Come down.

Mr. Brown: Just a minute, your Honor.

Cross examination by Mr. Brown:

Q. Mr. Witness, has the St. Joe Paper Company taken any action of which you know, with respect to the way in which it would vote for acceptance or rejection of the Interstate Commerce Commission plan that is now or that has now been certified to this Court? A. The St. Joe Paper Company has taken no action on that plan.

Q. Can you, or are you willing to state what action the St. Joe Paper Company will take if and when this plan is submitted for acceptance or rejection? A. I can tell you how I will vote. I can not tell you——

Q. Will you do that? A. I can not commit my fellow directors.

Q. Will you state that? A. I will oppose the plan and vote in opposition to this plan.

Mr. Brown: That is all.

Re-direct examination by Mr. Russell:

Q. Mr. Main, irrespective of what may appear, formally, in the minutes of the meetings of the executive committee of St. Joe Paper Company, have the members of that Committee kept themselves informed of the developments in connection with the Florida East Coast Railway reorganization? A. There is such a small group of us that we are practically in general or daily communication, and we are constantly informed of all the procedures.

Mr. Russell: That is all.

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The Court: Is there anybody else now?

. . . To which inquiry there was no response.

The Court: I have one thing I ought to call attention to that I asked the other day, as to the charter of this Company, and I was told that it was in the record. I have not seen it. I was furnished, by the trustees, a copy, and perhaps I should tell you what is in it, and of what importance it is.

The charter consists of letters patent, issued by the Governor and Secretary of State of the State of Florida, to certain named persons, to the Florida Coast and Gulf Railway Company, as it then was, but, the name has been changed by amendment, to the present name, with some other changes, and a 325 mile long road was the main thing first authorized from Jacksonville on down. And, it names the counties. And, therefore, the State of Florida hereby grants unto the above named persons, their successors and assigns, full authority by and under the name, "Florida and Gulf Coast Railway Company", to exercise their powers and privileges of a corporation for the purpose of above stated, and in accordance with the said articles of incorporation and the laws of this state. I was a little struck by the fact of "assigns", named in the grant of the franchise, because I had had some doubts of "assigns", where it was not in there, but it is in there.

I asked Mr. Frink if he would find out if there was anything in the laws of Florida that would prevent merger, or, embarrass it in any way, and he said not. At the time this charter was granted, here, I understood from him, that it was still the law, and there was this item of legislation with respect to such things, and the section is headed —this is in the revised general statutes of Florida, 1892, when this charter was granted.

"2248: CONSOLIDATION, LEASE AND PURCHASE.—Any railroad or canal company in this state shall have the power,

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and authority is hereby granted, to make and enter into contracts with any railroad or canal company which has constructed or shall hereafter construct any railroad or canal within this state or in another state, and will enable said companies to run their roads in connection with each other and to merge their stock, or to consolidate with any company within or without this state, or to lease and purchase the stock and property of any other company, and hold, use and occupy the same in such manner as they shall deem most beneficial to their interests. It shall be lawful for such companies to build, construct, and run as part of their corporate property, such number of steamboats or vessels, as they may deem necessary to facilitate the business operation of such company or companies. Parallel or competing lines of railroad may not consolidate their several franchises, lines of railroad, or the management thereof, without special permission from the State Railroad Commission, and also consolidations or attempted consolidations, without permission as aforesaid, shall be ultra vires."

I do not know what that may have to do with it, but I asked for it, and received it, and you have it.

Mr. Bourne: May I get the number of that section, your Honor?

The Court: This is not the present one. It is the revised statutes of 1892, Section 2248. I don't know where it would appear in the new revision. They have a very elaborate one now.

Mr. Bourne: There has been some discussion of it in the——

The Court: My attention was called to the steamboat companies and stocks, here, in the argument.

Mr. Patterson: What is the section?

The Court: Section 2248.

Mr. Patterson: Section 360.10 relates to consolidation and merger of railroads.

The Court: It is another revision. There have been several of them.

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Mr. Bourne: Your Honor, not just those under Section 77, but Section 5 of the Interstate Commerce Commission affects the state laws.

The Court: It may be. The Federal Government grabs everything and the Supreme Court says it is all right. I do not know whether these roads would be called competitive or not.

Mr. Bourne: The Commission found not.

The Court: I had particularly in mind this steamboat ownership that was part of the railroad franchises in Florida. You remember, we had two companies, the P & O and the East Coast. It struck me it was under this one that they were undertaking to run steamboats. It has been brought down, unchanged, has it?

Mr. Frink: Changed and revised, but not enough to affect what you have in mind.

Mr. Howell: What is the F. S. A. Annotation?

Mr. Patterson: 360.10.

Mr. Bourne: If I might have a few minutes, your Honor?

The Court: I understand nobody has any further evidence. Do you want to go ahead with the arguments?

Mr. Byrnes: May it please your Honor, would your Honor indicate whether or not you desire to place any limitation upon argument, so that——

The Court: No, sir, I do not desire to do it unless it becomes necessary. I can stay here until Saturday evening. It looks like that should be time enough to talk everybody out.

Mr. Byrnes: I hope so. I was going to ask your Honor whether or not you wished to go on this afternoon, or if it would be possible to meet at nine thirty in the morning?

The Court: I will trade that way with you, if it suits everybody else.

Mr. Byrnes: I will be glad.

The Court: Does everybody agree to that?

Mr. Bourne: Yes. I wonder if we can have some information on what your Honor's desires are about briefs?

The Court: No, if I know anything about this, I would decide it from the bench. I have always done that as a Circuit Judge. However, I can not decide this from the bench. I would not want briefs covering what has been said.

Mr. Milam: Judge Strum, in setting this matter, said he wanted briefs at the conclusion of the hearing, and we have ours prepared accordingly.

Mr. Bourne: Mine is nothing like in completed form, and I would have to do——

The Court: Do not burden me with too many briefs. I am very impatient in reading anything that I have already heard. If there is anything that the argument leaves in the air, that I do not know about, and you can not tell me about, I will certainly welcome any light that could be shown on a situation like that. When it comes to figuring out what all these figures are, I am not a very good accountant. Figures begin to bewilder me. I do not know if briefs would help me or not. My inclination would be to follow the Commission, unless I see something definitely wrong in the situation. That would be my inclination. Of course, I am not committing myself on it, but I am telling you honestly where I stand. I do not understand railroad accounting very much. It looks artificial to me, but I think, in the long run, it works out all right, or it would not be there. I think the expert accountants, by making alterations, can make it good either way.

We will recess now until nine thirty tomorrow morning.

. . . And thereupon Court adjourned to be reconvened at 9:30 o'clock a. m., Thursday, January 13, 1949.

. . . And at 9:30 o'clock in the forenoon, Thursday, January 13, 1949, Court reconvened pursuant to adjournment of the preceding day, and the following further proceedings were had:

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Mr. Russell: May it please the Court, in connection with the examination of Mr. Main, counsel for the Coast Line inquired about resolutions of the executive committee. We have secured a copy of that now, and I tender it. I offer it in evidence.

> . . . The instrument last above referred to was received and filed in evidence and marked Objector St. Joe Paper Company's Exhibit No. 7.

Mr. Byrnes: Is it the wish of the Court that we proceed with the argument?

The Court: Yes, sir. I might say this. A meeting of the Jacksonville Bar Association will be held at noontime and Judge DeVane and I expect to be there. I thought we would suspend argument at a quarter to one and come back at two. It is just a slight difference in time, but you might bear that in mind, as you go along with your argument.

Mr. Bourne: I wonder whether your Honor wouldn't care to make some division of time, at least between the objectors and the supporters of the plan. I do not know how many counsel there are, or who will argue for the opposition, or how much time they will take.

The Court: You may talk as much as you want to.

Mr. Bourne: It would appear to me that it would be fair to allot the supporters of the plan as much time as the Objectors?

The Court: I think that is a reasonable suggestion.

Mr. Bourne: Can I go on the assumption that the Objectors would be through by the middle of tomorrow?

The Court: Oh, I think so. One side should have as long as the other.

Mr. Byrnes: If your Honor please——.

The Court: Just a minute. You are one of the Objectors?

Mr. Byrnes: Yes, sir, St. Joe Paper Company.

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The Court: I think you can agree between yourselves who will speak and how long you will speak. Can you agree to that?

Mr. Byrnes: Yes. I would like to say this. While there are a number of Objectors here, we could not control the desire of counsel for Mr. Claughton or for any of the other bondholders.

The Court: Of course, you could not control it, but somebody has got to modify it.

Mr. Byrnes: I want to say, in an effort to save time, we did try to reach some agreement when the Court adjourned yesterday afternoon and we discussed it in the hall and agreed, at least, upon the order in which we would ask to speak.

The Court: What is that order?

Mr. Byrnes: The order is, the bondholders of the Railway Company, and then the representative of the Railway Executive Board.

The Court: According to this memo, a total of nine hours is suggested? Nine and one-half hours?

Mr. Byrnes: Yes, sir. It was generally understood by those who discussed the matter, that we would try to accommodate ourselves to such time as would be possible, but at that meeting they could not see how long it would be.

The Court: All right.

* * * * * *

(Here followed argument on the objections to the Plan.)

* * * * * *

The Court: Does some other counsel wish to say something?

Mr. Bourne: I would like to say something further, your Honor. You said if anything were to be considered a part of the record, the documents should be designated, and I ask if it is sufficient if I designate them by number. The printed Court record?

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The Court: Is this for the reporter's convenience, or are you going to file them with the Clerk?

Mr. Bourne: Your Honor said, for consideration of what is in the record before your Honor, if we might wish to have any part of the Court record incorporated, that I name those. Is it sufficient if I do it by document number?

The Court: I think so. If it can be identified so everybody can find it.

Mr. Bourne: Shall I read or give it to Mr. Halter?

The Court: Dictate it.

Mr. Bourne: They are Numbers 1, 2, 3, 69, 144, 336, 506, 507, 588, 595, 619, 633, 655, 656, 662, 663, 674, 693, 697, 699, 700, 701, 702, 703, 704, 705 and 715.

These include the lien orders that have been referred to. The first mortgage and so forth.

The Court: In this receivership case?

Mr. Bourne: In the reorganization case, yes, sir.

The Court: Is there anything in there that I ought to know particularly?

Mr. Bourne: No, I don't think so, particularly. Most of these things have been referred to by one counsel or another.

The Court: If there is anything I should decide on, I want to be apprised of it.

Mr. Bourne: I don't think so. I did mean to include, Mr. Halter, the transcript of the hearing on October 1, 1948, which was filed on October 7, 1948, and that is the hearing in which Judge Strum said that he would reserve jurisdiction to decide at the consummation of the plan, how much was payable under the lien orders, and the lien orders are included here, and that ties in with what the Commission did in the report of March 25, 1948.

The Court: There is where I got my lien idea from. From those orders. The lien about these bonds.

Mr. Bourne: There was a lien about bonds and liens about additions and betterments. That is all now submitted to the Court for consideration.

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Certificate.

The Court: There is nothing for me to decide about that now?

Mr. Bourne: I don't think so.

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(Here followed further argument on the objections to the Plan.)

The Court: Gentlemen, I thank you all for your courtesy, patience and assistance, and I hope that we will all do well in our respective judicial efforts.

. . . There being no proceedings before the Court, the hearing adjourned.

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CERTIFICATE.

I, V. F. Halter, Official Court Reporter, United States District Court, Southern District of Florida, Jacksonville Division, do hereby certify that I reported, in my official capacity, the within named proceedings and that the foregoing pages numbered 1 to 1049, inclusive, constitute a true and correct transcript of said shorthand notes.

Dated at Jacksonville, Florida, this 12th day of March, 1949.

V. F. HALTER,
Official Court Reporter.

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Opinion of Samuel H. Sibley, United States Judge Designate.

(Filed Jan. 24, 1949)

IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

IN PROCEEDINGS FOR THE REORG[illegible]ION OF A RAILROAD.

IN THE MATTER
of
FLORIDA EAST COAST RAILWAY COMPANY,
Debtor.

No. 4827-J.

SIBLEY, Judge Designate:

After hearing much evidence and argument I have to decide whether a plan of reorganization of the Florida East Coast Railway Company under Section 77 of the Bankruptcy Act certified to this court by the Interstate Commerce Commission as fair and equitable, compatible with the public interest and meeting the requirements of Section 77(b) and (e), should be approved by the court. There is on practically all the debtor Company's property a general mortgage securing a principal of $12,000,000 of bonds dated in 1909 which is not in default and not due till 1959. There is a second general mortgage dated in 1924 securing issues of refunding bonds of a principal of $45,000,000, on which an additional amount of about $35,000,000 of defaulted interest is due. There are large unsecured debts having no priority, and the Company is and has long been insolvent. A receivership in this court was secured on a creditor's bill in 1931; and the following year the trustees in the refund-

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ing mortgage moved to foreclose it in this court and secured a receivership, which was consolidated with the other. The receivers operated the railroad successfully and profitably, keeping the interest on the first mortgage of $540,000 per annum paid up and accumulating a large amount of surplus cash. In 1941 a committee representing the holders of about $30,000,000 of the refunding bonds in their behalf filed this reorganization proceeding. The Interstate Commerce Commission in due course in 1942 certified to the court a simple plan of reorganization which would have continued to carry a first mortgage and to vest the new common stock prorate in the refunding bondholders, but it restricted the capitalization to $37,500,000. In 1943 the court disapproved the plan because the Commission had taken insufficient account of the large earnings and profits during these war years sufficient to pay off the first mortgage and leave a large surplus. In 1945 another plan was certified by which the first mortgage would be paid off out of the cash on hand, and new common stock and income bonds would be divided among the refunding bondholders. $8,700,000 more of the cash on hand was to be set apart for rehabilitation and improvement of the railroad. The reorganization and capitalization value was raised to $40,500,000. St. Joe Paper Company had by this time bought fifty-one percent of the refunding bonds, and to safeguard minority holders against any abuse of the majority control a voting trust was provided in the plan. There was a suggestion by what is known as the Lynch interest, owning some $3,000,000 of the refunding bonds, that a controlling interest be acquired by the Atlantic Coast Line Railroad Company by awarding it common stock to be paid for by new bonds of the latter, but it was repelled by the Commission because of aggressive opposition by other refunding bondholders and their threat to vote to reject the plan, and because the Coast Line's fixed charges could not in view of recent operating deficits be prudently

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increased. This plan, without the Coast Line control, was declared compatible with the public interest and certified for approval Jan. 8, 1945. Before the certificate became final, the Coast Line bought a large unsecured debt for a small sum and an agreement to divide any collections with the seller, and was allowed to intervene as a party in interest and present a new plan whereby in lieu of the Coast Line's acquiring a majority of voting stock to secure control, the debtor's properties should be merged into the Coast Line and the debtor's creditors should be paid cash and Coast Line securities in satisfaction of their claims. The whole matter was reopened and referred to an examiner and evidence taken especially touching the propriety of control by St. Joe Paper Company or the Coast Line. After a very lengthy discussion the Commission concluded in general terms that there would be betterment of service and economies of operation and increased financial stability by the merger with the Coast Line, and more experience and less distraction by other interests, than if St. Joe Paper Company controlled; and that a plan of reorganization putting the Paper Company in control would not be compatible with the public interest but one putting control in the Coast Line would be compatible therewith. With modifications, the Coast Line plan was certified, by a majority of one Commissioner, on April 8, 1947. 267 I. C. C., 295-391. It was again taken under consideration however, especially on the question whether there was power under Section 77 and the Interstate Commerce Act to propose such a plan of involuntary merger, two additional Commissioners participating. The certification was adhered to by six Commissioners, the other five strongly dissenting both in law and fact. 267 I. C. C., 729-759.

Being thus of opinion that it was not compatible with the public interest for St. Joe Paper Company to own a controlling voting stock interest in the debtor's railroad a majority of the Commission, by way of defeating that

control, adopted this present plan of merger which would result in St. Joe having only a relatively small amount of voting stock in the merged set-up. The plan as formulated pays off the first mortgage and distributes among the holders of the East Coast refunding bonds pro rata any "free cash" on hand at the plan's consummation, meaning thereby the accumulated earnings not needed by the railroad and not included in the valuation of the railroad property at $40,500,000; and then the debtor's entire remaining property is to be transferred to the Coast Line; and as the equitable equivalent of the bondholders' rights in the property for each $1,000 refunding bond $91.67 of cash is to be paid by the Coast Line, plus $300 par of its new mortgage bonds secured by the transferred property, and its divisional income bonds of a par of $175, and $200 in four-dollar-dividend preferred stock having voting power and participating with the common stock in dividends in excess of the fixed dividend, and one and one-third shares of no par Coast Line common stock put at $133.33. All these at par add up to $900 per bond. The prorata share of the bond in the railroad property to be transferred at the value of $40,500,000 as fixed by the Commission both for reorganization purposes and as an upset price in case of sale is $900. But the Commission finds that common stock of the Coast Line was then selling at 55, and had recently been as low as 45. The evidence heard by me both from the advocates and opponents of the plan is that none of these securities when issued will likely be worth par. The gist of the matter is that, because the majority of the Commissioners think it not compatible with the public interest for St. Joe Paper Company to own a controlling amount of voting stock in the reorganized East Coast railroad if reorganized in the simple and natural manner several times certified by the Commission unanimously by giving all the refunding bondholders a prorata share of its common stock, all of them must sur-

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render the investment they have chosen and lawfully own in the East Coast property and must take in return an investment which most of them do not desire to own and do not think is an equivalent.

In the hearing before me, as in those before the Commission, the Coast Line urgently insists on the approval of the plan. It proposed it and as the Commission itself reports eagerly desires it. The Committee of New York bankers, which represented when it instituted this reorganization proceeding over $30,000,000 of the refunding bonds but now represents only $572,400, appears in support of the plan. These bankers, according to the testimony of their spokesman, sold the bonds originally, and after their default have been trying without compensation to assist their customers who bought them. They take a banker's view, that the important matter is whether the securities to be issued under the plan will probably be worth on the market more than those issued in an independent reorganization of East Coast alone. Though they do not think any of them will be worth par, they think the Coast Line securities will be worth more. They and their clients are not interested in being stockholders or helping to run the railroad, but are seeking only to sell out as soon as possible and to the best advantage.

No one else supports the merger plan, but numerous objectors and intervenors strongly oppose it. The Southern Railway Company and the Seaboard Airline Railroad Company, which the Commission finds are competitors with the Coast Line for the traffic of the East Coast railroad at its northern terminus at Jacksonville, will be injured by giving over the East Coast to the Coast Line. The bargaining representatives of the East Coast employees contend that the employees will be injured in losing their jobs and in their seniority rights. These other railroads and their traffic and these employees are a part of the affected public whose

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interest must be considered by the Commission, but they have no creditor's rights or property interests and they have been considered by the Commission in determining the question of public interest. For reasons stated below, I do not think they present any special matter for the court. Their argument indeed is addressed mainly to invalidity of the plan on other grounds.

St. Joe Paper Company, holding by valid title a majority of the refunding bonds, $23,260,000, and in behalf of The Dupont Estate Trust which owns $1,740,000, attacks the plan as earnestly as the Coast Line defends it, both seeming to regard the control by stock ownership of the East Coast railroad as the principal matter involved. The Paper Company contends, among other things, that among its creditor rights in this insolvent corporation is the right to a prorata equitable ownership of the mortgaged property, which expressly includes the franchise granted to the incorporators by the State of Florida to run a railroad between Jacksonville and Miami in that State; and that the proposed plan takes this property without due process of law, and in so far as it rests on public interest takes it for public purposes without just compensation, contrary to the provisions of the Fifth Amendment. It contends, also that Section 77 properly construed does not authorize a plan of reorganization by a forced merger, and that if it does, this particular plan is not fair and equitable and does not give due effect to its creditor rights. It insists that all these contentions are fully open for this court to decide.

The remaining refunding bondholders object strongly in several groups. One group, owning a par value of about $5,000,000, reside in and around Miami. One of them owning over three millions of bonds testifies that he bought most of his bonds after the certification by the Commission of its first plans providing for common stock ownership by the bondholders and on the faith of them; that he and his associates desire to be stockholders and to help run

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the railroad; that they do not wish any investment in the Coast Line, and do not regard it as the equal of the East Coast, and do not like its capital set-up; and that they will vote against the acceptance of this plan if submitted to a vote. Their counsel attacks the plan on grounds similar to those above indicated as to the Paper Company.

Another group residing at Tampa and owning above $1,000,000 of the bonds take the same position and their representative testifies they will certainly vote to reject the plan if submitted to a vote.

What is known as the Lynch interest represents over $3,000,000 of bonds, and though it introduced the Coast Line to the Commission it is strongly opposed to this plan, and will vote against it. It is not so much concerned about control as it is about the unfairness of the result, but it urges also objections similar to those of the Paper Company.

In behalf of the remaining refunding bondholders, who are unorganized, the trustee in the bond mortgage opposes approval of the plan, but does not undertake to say how these bondholders will vote.

The defenders of the plan contend that the court has to decide only questions of law, fact questions being settled by the Commission. The objectors contend that the court's function is to pass independently on the matters the statute submits to it, whether involving law or fact, not being bound by the conclusions reached by the Commission in the exercise of its functions. Neither view is altogether correct. I think the statutory provisions are to be followed as written, Commission and court each acting in the sphere assigned. By Section 77(d) the Commission has the duty to formulate and approve a plan of reorganization which may be different from any which has been proposed by parties in interest, which "will in its opinion meet with the requirements of Subsections (b) and (e) of this Section, and will be compatible with the public interest; or it shall render a report and order in which it shall refuse to approve

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any plan", stating fully the reasons for its conclusions. This is the only way in which a plan can come to the court, and the court cannot alter it. Subsection (e) states the function of the court, requiring notice to be given "all parties in interest" of a time to file their objections in writing to the plan and their claims for equitable treatment. If such objections and claims are filed the judge shall hear them and approve the plan "if satisfied that it complies with Subsection (b), is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders and does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders"; besides other matters not here important. "If the judge shall not approve the plan, he shall file an opinion, stating his conclusions and the reasons therefor, and he shall enter an order in which he may either dismiss the proceedings, or in his discretion and on motion of any party in interest refer the proceedings back to the Commission for further action", transmitting to it a copy of any evidence he received. If he approves, the plan goes back to the Commission for submission to the proper classes affected for their acceptance or rejection; the result of the vote is certified to the judge, and if two-thirds in amount of each class affected accept it, the judge shall confirm the plan; but if not so accepted the judge may after another hearing confirm it anyhow, if satisfied that it gives a fair and equitable equivalent of the interests of those rejecting it and that the rejection is not reasonably justified, and that the plan does not conform to the requirements for its previous approval by the court. Neither in the hearing for approval, nor in that for confirmation notwithstanding rejection, is the judge required to consider compatibility with the public interest; though the Commission is so

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required. At the end of Subsection (e) it is provided that if it shall be necessary to determine the value of any property for any purpose the Commission shall determine the value and certify it to the court, observing certain standards as to the property used in railroad operation. I conclude that the matter of compatibility with the public interest of a plan is left to the opinion of the Commission and is not to be reviewed by the judge. Also that certifications of value by the Commission are in general final if the legal standards have been observed. Both are within the peculiar expertness of the Commission. An exception may exist if the judge is investigating a question of Constitutional right which transcends the statute, for such are always judicial rather than administrative questions. And on the matters about which the statute says the judge must be satisfied in order to approve a plan or confirm it over rejection, he has the right to make his independent investigation and is not bound by the conclusions of the Commission thereon. That the judge is not restricted to the facts certified by the Commission but may take additional evidence, is shown by the requirement that if the matter is sent back to the Commission a copy of the additional evidence shall be sent to the Commission. What is fair and equitable and what gives due recognition to the rights of each class of creditors and stockholders, and what is the law of the land, are matters of a judicial nature and within the peculiar expertness of the courts. On them the judge has the last word. While reorganization is the object of Section 77, it is safeguarded by the requirement of approval of the plan by both Commission and judge, and if that cannot be secured the statute itself requires that the proceeding be dismissed and the debtor and his estate be remitted to a previous receivership, if any. So in this hearing, such additional testimony has been taken. I have no function to review the matter of compatibility with the

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public interest of the plan; or the valuation of the property involved unless on the question of unconstitutional taking of it; but I should independently consider those matters which the statute requires me to be satisfied about, in the light of the new evidence concerning them.

Turning next to some vital questions of law which have been pressed, I do not think it matters whether the Coast Line as an unsecured creditor (which class, along with the stockholders, has been found to have no interest) had a right to present a plan. The Commission took note of it, modified it substantially and adopted it. The Commission had the right to propose a plan not presented by any party in interest. This plan comes to the court as the plan or proposal of the Commission.

It is very earnestly argued that Subsection (b) which gives the specifications for a plan, in saying it "may include the transfer or control of all or any part of the property of the debtor to another corporation or corporations, the *merger or consolidation* of the debtor with another corporation, etc.," does not mean a forced merger, which the Interstate Commerce Act has never permitted the Commission to compel, though Congress has often considered the matter. The history of the legislation in adopting Section 77 in 1933, is pointed to as showing that Congress was then concerned that no such thing was to be done under Section 77; and so again in 1935 when the section was revised; and that the reference to the Interstate Commerce Act in Subsection (f) which the Commission thinks applies only to its actions after confirmation of a plan, was intended to apply throughout and became accidentally misplaced in redrafting the Act. Without reciting the history, I think this contention is true. Of late years courts have perhaps gone too far in using legislative history in a very loose way to supplement or change an Act as written. If this question related directly to the liberties or property of the people I would be loath to do it now. But it relates to the extent

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of the power granted by Congress to its own agent. And the Interstate Commerce Act can be construed with Section 77 to ascertain what Congress really meant by a railroad "merger or consolidation", and whether it meant one consented to by both parties to it. No one would contend that the Coast Line could be forced. But the Commission argues that this debtor has also consented, because its stockholders have not appeared to object. I think that does not follow. It is expressly found that the debtor's insolvency is such that the stockholders are not interested parties. The debtor, its property and affairs now belong in equity to the creditors, and more specifically to the refunding bondholders. The full jurisdiction and control over them is in this court. The refunding bondholders by an overwhelming majority do not consent. If the court has the power as a court of bankruptcy to consent for them, under the circumstances of this case it should refuse to do so. I do not think Congress intended to force a merger undesired by the majority in amount of the affected parties by *permitting* a merger to be part of a plan. This conclusion makes it unnecessary to determine whether the court's power in bankruptcy could be extended to force a merger consistently with the Fifth Amendment. It also ends this plan. But I am assured in argument that the decision if made either way will be appealed, so it will be useful to decide the merits of the plan, if it is hereafter held that a forced merger is lawful.

I conclude also to disapprove the plan if lawful, because it is testified under oath and is plainly apparent that it will be rejected almost unanimously by the refunding bondholders. Only $572,400 of bonds out of $45,000,000, about 1.3 per cent, say by their committee that they will probably accept. Unless on a vote 66⅔ percent accept, I would not be bound to confirm the plan, and I would not confirm it notwithstanding its rejection because I think the objectors are reasonably justified in objecting and not mere

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obstructors. Ordinarily this conclusion would be premature because the vote has not been taken and objectors might change their minds or sell out. But the atmosphere of this trial and the feeling manifested satisfy me absolutely that there will be no material change. It is perfectly futile to waste time and effort to go further with the matter.

I conclude also that the plan is not fair and equitable and does not afford due recognition to the rights of the refunding bondholders. These bondholders originally had a general mortgage covering railroad property, franchise, and income, with a right to a receivership on default to collect the income, and to a decree of foreclosure and a judicial sale; and the right to bid for and buy the property if they wished and made the highest and best bid. They got the receivership, and it was extraordinarily successful, not only maintaining the railroad in operation and carrying the first mortgage without default, but accumulating so much cash not needed for railroad purposes as to enable a third of the first mortgage bonds, $4,000,000, to be bought in, and four coupons of the refunding bonds to be paid, $4,500,000. Diesel engines have been bought, and new cars, an unprofitable extension of the road eliminated at an outlay of about $1,000,000, and the mainline shortened by a money saving cutoff at an outlay of about $1,000,000; and a program of relaying the tracks with new and heavier rail has been two-thirds carried out and enough money set aside to finish the outlay, being over $5,000,000; and there is enough cash on hand now to pay off the remaining $8,000,000 of first mortgage bonds, as the present plan proposes. This railroad property is in equity the property of the refunding bondholders who replace practically the stockholders as owners. On a reorganization they would naturally receive the common stock prorata. All the plans approved by the Commission save the present one so provided. With that set-up it would not much matter what reorganization value and total capitalization was fixed; for

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the common stockholders would get the surplus earnings. Most of the bondholders wish to continue to own and run the railroad. Many of them bought bonds during this proceeding with that purpose, as they had a right to do. The Commission indicates that the fact that they bought below par affects in equity their standing. That is incorrect. Each took all the rights of his vendor, so that original purchasers of bonds at par and subsequent purchasers below par, and even those who may have had bonds given them, stand alike. The debtor got the same money for each bond and owes the full amount on each. This was determined in a railroad reorganization in *Georgia, Florida and Alabama R. R. Co.* vs. *Bankers Trust Co.*, ... Fed. (2) ....., recently decided by the Court of Appeals of this Circuit, where certain purchasers of bonds paid less than par and paid nothing for defaulted coupons, but were allowed to prove the full principal and coupon interest. But the Commission, within its province, though by a bare majority, has held that the public interest prevents St. Joe Paper Company from holding a majority of common stock, and therefore proposes that no bondholder can have the common stock he desires and expected, but all must sell their equitable rights in this property, and must take in exchange that which is not money and which they do not desire to have. This seems to me to be unfair, inequitable, and not a due recognition of their rights. Assuming that a forced merger is within the provisions of Section 77 and within constitutional bankruptcy power, it ought to be a last resort. There is no necessity for it here, for all that hinders a reorganization by a less drastic plan is that St. Joe Paper Company has bought too many bonds and become entitled to too much common stock under the former plan. A voting trust to prevent its exercise of majority stock control was adopted by the Commission in one plan. There might be devised a plan under which some of this stock should be deprived of voting power or awarded to other stockholders who in the

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Commission's opinion could properly hold it consistently with public interest, compensating St. Joe Paper Company with other values. I do not see that any situation is here presented which can be said to make this plan the only possible one, if that could render it fair and equitable.

This case is not as though the merging corporations were affiliates, and members of the same corporate family already. In such a case there is really a mere simplification of corporate organization of interests already related. The Coast Line, through an unsecured creditor, is really a stranger in interest, having been found to have no interest in the railroad property to be reorganized.

Yet further, while deferring to the finding that the valuation of the railroad property as fixed by the Commission is equalled by that of the Coast Line securities, I am impressed that evidence produced before me, if it had been before the Commission, might have produced a different result. The materials for some of it already existed, but were not assembled for or considered by the Commission, and some relate to occurrences since it made its finding. I am only confused by the accountants' comparisons in terms of dollars after "adjustments" more or less plausible by which they have reached contrary conclusions; but I am impressed by undisputed facts of tonnage hauled, population increases, and other progressive improvements each year up to this one, showing that the territory of the East Coast is going steadily forward at a faster pace than the general territory served by the Coast Line; that by the testimony of the Coast Line high officials its railroads have for the past three years had deficits in operating revenues, so that the system has been dependent on non-operating revenues, while the East Coast has consistently continued to net more than the $1,500,000 the Commission has fixed as its normal rate. This gives these bondholders, regardless of intricate bookkeeping, a right to feel that they have a better railroad than the average of the Coast Line. The

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very aggressiveness of the Coast Line in proposing and defending this plan indicates that the Coast Line thinks it is getting a bargain; that what it gets is not the mere equivalent of what it pays, but much more. There seems, too, to be a fault in the Commission's finding of equivalency. The Commission recognized the necessity of participation as common stockholders in the merger entitling these bondholders in good years to a chance to recoup their losses by increased dividends. They considered that one and a third shares of common stock per bond was inadequate participation and modified the Coast Line plan by making the two shares of preferred stock to be participating as to dividends and to carry voting powers, and so equivalent to common stock. But it was overlooked that the plan makes the preferred stock callable at par at any time, on thirty days notice, so that if good years were really making it pay, it could be called and the dividends kept by the System, these new stockholders being left with only one and a third shares of voting and high earning stock instead of the three and a third shares the plan is supposed to give them. I have no right to make new valuations, but these considerations further move me to disapprove the plan as not fair and equitable.

For all these reasons the plan of reorganization now under consideration is disapproved and rejected by the court. If the Commission continues to think that St. Joe Paper Company cannot compatibly with the public interest be made the holder of the majority of the voting stock in an internal reorganization of the debtor, some plan may still be devised by it to relieve this difficulty, as by using a voting trust, or providing for a part of the Paper Company's common stock to have no voting right so long as it is owned by the Paper Company and would give it voting control. This, while limiting somewhat the creditor rights of the Paper Company, is necessitated by its own act in overbuying refunding bonds, and might be more equitable

than to defeat the similar rights of others who have done nothing amiss. I therefore overrule the pending motions to dismiss the proceedings and grant those which ask that the proceedings be referred back to the Commission for further effort to make a proper plan.

As to the allowance of expenses and compensation for services from Feb. 15, 1945, through May 15, 1948, in preparing a plan, I will defer action until the Commission presents another plan or reports that none can be made. In view of the very thorough and repeated consideration given this debtor's affairs already, this should not take long. The Commission has not yet fixed maximum limits for all the claims, and during the period named it seems to me that the efforts put forth were not altogether in aid of formulating a fair and equitable plan of reorganization, but to some extent were a partisan struggle for control which ought to be paid for by clients rather by the debtor's estate. Of that the Commission can judge better than I. I refer back to the Commission for reconsideration and completion the fixing of these maximum limits, and to cover the further efforts to aid the Commission to achieve a plan.

Let the Commission be forthwith furnished with a copy of this opinion and order and of the evidence taken before me in this hearing.

This January 22, 1949.

SAML. H. SIBLEY.
U. S. Judge Designate.

Notice of Appeal of Atlantic Coast Line Railroad.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

NOTICE IS HEREBY GIVEN that Atlantic Coast Line Railroad Company hereby appeals to the United States Court of Appeals for the Fifth Circuit from the order filed herein on January 24, 1949 disapproving the Plan of Reorganization of the Debtor and referring the proceedings back to the Interstate Commerce Commission for further action, and from every part of said order.

Dated, Jacksonville, Florida, February 21, 1949.

McCARTHY, LANE & HOWELL,
Atlantic National Bank Building,
Jacksonville, Florida.
By CHARLES C. HOWELL, JR.,
A Partner.

CHARLES COOK HOWELL,
Atlantic Coast Line Railroad Company,
Wilmington, North Carolina.

ALEXANDER & GREEN,
120 Broadway,
New York, N. Y.
By EDWARD W. BOURNE,
A Partner.
Attorneys for Atlantic Coast Line
Railroad Company.

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Notice of Appeal of Deposit Committee.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

NOTICE IS HEREBY GIVEN that Arthur M. Anderson, H. C. Hagerty, H. S. Sturgis and D. C. Borden, a deposit committee for First and Refunding 5% Bonds of Florida East Coast Railway Company Due 1974, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the order filed herein on January 24, 1949 disapproving the plan of reorganization of the debtor and referring the proceedings back to the Interstate Commerce Commission for further order, and from every part of said order.

Dated, Jacksonville, Florida, February 21, 1949.

STOCKTON, ULMER & MURCHISON,
Barnett National Bank Building,
Jacksonville 2, Florida.
By /s/ HERMAN ULMER,
A Partner.

DAVIS POLK WARDWELL SUNDERLAND & KIENDL,
15 Broad Street,
New York 5, New York.
By /s/ EDGAR G. CROSSMAN,
A Partner.

Attorneys for Appellants Arthur M. Anderson, H. C. Hagerty, H. S. Sturgis and D. C. Borden.

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Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

IN THE

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad

IN THE MATTER
of
FLORIDA EAST COAST RAILWAY COMPANY,
No. 4827-J.

To the Clerk of the above-named Court:

You are hereby requested, pursuant to Rule 75(a) of the Federal Rules of Civil Procedure, to include in the record on the appeal of the above-named appellant to the United States Court of Appeals for the Fifth Circuit from the Order filed herein on January 24, 1949 disapproving the Plan of Reorganization of the Debtor and referring the proceedings back to the Interstate Commerce Commission for further action the following portions of the record, proceedings and evidence herein:

1. The papers covered by certificate of the Secretary of the Interstate Commerce Commission dated the 22nd day of August, A. D. 1942, reading as follows:

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of the following:

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Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Petition of Equitable Life Assurance Society of the United States, et al., and order of the Commission entered March 1, 1941;

Petition of Jesse Ball Dupont, et al., as Trustees, and order of the Commission entered March 8, 1941;

Petition of Bankers Trust Company, et al., as Trustees, and order of the Commission entered March 5, 1941;

Petition of Guaranty Trust Company of New York, et al., as Successor Trustees, filed March 17, 1941;

Petition of Fred G. Hamilton, filed March 17, 1941;

Petition of Independent Protective Committee of Florida East Coast Railway Company First Mortgage Bonds, filed March 17, 1941;

Petition of The New York Trust Company, as Successor Trustee, filed March 18, 1941;

Petition of S. A. Lynch, filed April 21, 1941;

Petition of Greater Miami Traffic Association, filed April 22, 1941;

Order of the Commission entered February 24, 1941, and accompanying notice;

Petition of Scott M. Loftin, filed March 10, 1941;

Petition of Edward W. Lane, filed March 10, 1941;

Statement supplementing petition of Edward W. Lane, filed March 17, 1941;

Objections of Fred G. Hamilton, filed March 17, 1941;

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Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Order of the Commission entered April 8, 1941;

Objections of Fred G. Hamilton, filed April 21, 1941;

Order of the Commission entered April 19, 1941, and accompanying report;

Appeal of Brotherhood of Locomotive Firemen and Enginemen from Ruling of Examiner Denying Leave to Intervene, filed April 30, 1941;

Reply of Trustees of The Estate of Alfred I. Dupont, filed May 10, 1941;

Order of the Commission entered May 31, 1941;

Certificate of the Commission entered June 2, 1941;

Order of the Commission entered June 7, 1941;

Report proposed by Ralph H. Jewell, Examiner, filed August 4, 1941;

Exceptions of Greater Miami Traffic Association, filed September 17, 1941:

Exceptions of Guaranty Trust Company of New York, *et al.*, Successor Trustees, filed September 20, 1941;

Exceptions of Estate of Alfred I duPont, filed September 20, 1941;

Exceptions of Independent Protective Committee, filed September 22, 1941;

Exceptions of Institutional Group of First Mortgage Bondholders, filed September 22, 1941;

Exceptions of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed September 22, 1941;

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Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Exceptions of Fred G. Hamilton, filed September 22, 1941;

Exceptions of Greater Miami Traffic Association, filed September 22, 1941;

Exceptions of Bankers Trust Company, et al., as Trustees, filed September 22, 1941;

Reply of Fred G. Hamilton, filed October 2, 1941;

Reply of Fred G. Hamilton, filed October 2, 1941;

Transcript of the stenographer's notes of the oral argument heard October 24, 1941, at Washington, D. C.;

Report and order of the Commission, filed and entered April 6, 1942;

Petition of John W. Martin, filed April 20, 1942;

Order of the Commission entered May 6, 1942;

Order of the Commission entered May 28, 1942;

Petition of Guaranty Trust Company of New York, Successor Trustee, filed June 4, 1942;

Petition of Trustees of the Estate of Alfred I. Du Pont, filed June 5, 1942;

Petition of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed June 5, 1942;

Reply of Guaranty Trust Company of New York, Successor Trustee, filed June 15, 1942;

Reply of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed June 15, 1942;

Petition of Independent Protective Committee filed July 18, 1942;

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Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Petition of Trustees of Estate of Alfred I. duPont, filed July 20, 1942;

Memorandum of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed July 30, 1942;

Order of the Commission entered August 10, 1942; and

Report and Order of the Commission, filed and entered August 10, 1942,

in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

2. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 22nd day of August, A. D. 1942, reading as follows:

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached is true copy of transcript of the stenographer's notes of the hearing held March 17, 18, 19, 28 and 31, and April 21 and 22, 1941, at Washington, D. C., in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the original of which is now on file and of record in the office of said Commission."

3. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 22nd day of August, A. D. 1942, reading as follows:

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of Exhibits No. 1 to 65, both inclusive, filed at the hearing held March 17, 18, 19, 28

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and 31, and April 21 and 22, 1941, at Washington, D. C., in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

4. The papers covered by a certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of the following:

Petition of Frank D. Newman for leave to intervene, and order of the Commission entered February 7, 1944;

Petition of United States Trust Company of New York for leave to intervene, and order of the Commission entered March 14, 1944;

Petition of St. Joe Paper Company for leave to intervene, and order of the Commission entered April 22, 1944;

Petitions of E. N. Claughton, Fred K. Conn and Associates, Edward Ball, Safe Deposit & Trust Co., Ogden T. Davis, Royal Palm Inv., Inc., and Bancroft T. Foley for leave to intervene, filed at the hearing held May 3, 1944;

Petition of Atlantic Coast Line Railroad Company for leave to intervene, and order of the Commission entered November 30, 1944;

Petition of Lorenzo C. Dilks for leave to intervene, and order of the Commission entered March 17, 1945;

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Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Petition of Railway Labor Executives' Association for leave to intervene, and order of the Commission entered May 28, 1945;

Petition of Southern Railway Company, *et al.*, for leave to intervene, and order of the Commission, entered August 1, 1945;

Petition of St. Johns County, Florida, *et al.* for leave to intervene, and order of the Commission entered October 22, 1945;

Petition of St. Lucie County, Florida, *et al.* for leave to intervene, filed at hearing held November 13, 1945;

Petition of City of New Smyrna Beach, Florida, *et al.* for leave to intervene, filed at hearing beginning November 6, 1945;

Petition of Alleghany Corporation for leave to intervene, filed at hearing held November 6, 1945;

Petition of the City of Fort Pierce, *et al.*, for leave to intervene, filed at hearing held November 28, 1945;

Petition of Miami Chamber of Commerce for leave to intervene, filed at hearing held November 28, 1945;

Petition of Brotherhood of Railroad Trainmen for leave to intervene, filed at hearing held November 23, 1945;

Petition of Jacksonville Chamber of Commerce, *et al.*, for leave to intervene, filed at hearing held November 13, 1945; and

Petition of Seaboard Air Line Railroad Company for leave to intervene, and order of the Commission entered September 23, 1946,

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in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

5. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of the following:

Plan of reorganization filed May 3, 1944;

Plan of reorganization filed November 6, 1945;

Order of the Commission entered November 6, 1943, and accompanying notice;

Proof of publication;

Order of the Commission entered November 29, 1943, and accompanying notice;

Order of the Commission entered December 31, 1943; and accompanying notice;

Order of the Commission entered February 16, 1944, and accompanying notice;

Petition of United States Trust Company of New York, as Trustee, filed March 15, 1944;

Petition of Frank D. Newman filed April 20, 1944;

Proposal of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed April 22, 1944;

Petition of St. Joe Paper Company, filed April 22, 1944;

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Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Answer and Objections of Bankers Trust Company, *et al.*, filed April 27, 1944;

Suggestions of Fred G. Hamilton, *et al.*, filed May 3, 1944;

Brief of Independent Protective Committee of First Mortgage Bonds, filed July 7, 1944;

Brief of Institutional Group of First Mortgage Bondholders, filed July 12, 1944;

Brief and argument of Fred G. Hamilton, filed July 14, 1944;

Brief of St. Joe Paper Company, filed July 15, 1944;

Brief of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed July 15, 1944;

Joint Brief of Joseph van B. Wittman, *et al.*, filed July 15, 1944;

Brief of Guaranty Trust Company of New York, *et al.*, filed July 15, 1944;

Brief of United States Trust Company of New York, filed July 15, 1944;

Brief of Frank D. Newman, filed July 20, 1944;

Petition of S. A. Lynch, *et al.*, filed November 8, 1944;

Reply of St. Joe Paper Company to Petition of S. A. Lynch, *et al.*, filed November 17, 1944;

Notice of the Commission dated November 29, 1944;

Brief of Independent Protective Committee, filed December 6, 1944;

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Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Brief of Fred G. Hamilton, filed December 7, 1944;

Brief of St. Joe Paper Company, filed December 7, 1944;

Brief of S. A. Lynch, *et al.*, filed December 8, 1944;

Memorandum of Atlantic Coast Line Railroad Company, filed December 8, 1944;

Summary, report and order of the Commission, filed and entered January 8, 1945;

Petition of Lorenzo C. Dilks, filed March 5, 1945;

Petition of St. Joe Paper Company, filed March 8, 1945;

Petition of Frank B. Newman, filed March 8, 1945;

Petition of S. A. Lynch, *et al.*, filed March 9, 1945;

Petition of Deposit Committee for the First and Refunding Mortgage 5% Bonds, filed March 9, 1945;

Petition of Safe Deposit and Trust Company of Baltimore, filed March 9, 1945;

Reply of S. A. Lynch, *et al.*, filed March 19, 1945;

Reply of St. Joe Paper Company, filed March 19, 1945;

Notice of the Commission dated May 8, 1945;

Transcript of the stenographer's notes of the oral argument heard May 29, 1945, at Washington, D. C.;

Order of the Commission entered July 20, 1945, and accompanying notice;

BLURRED COPY

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Petition of Atlantic Coast Line Railroad Company, filed July 27, 1945;

Petition of Fred G. Hamilton, filed August 2, 1945;

Order of the Commission entered August 17, 1945, and accompanying notice;

Order of the Commission entered October 25, 1945;

Amendment to petition of Fred G. Hamilton, filed November 5, 1945; and

Proof of publication, filed November 6, 1945,

in Finance Docket No. 13170, Florida East Coast Railway Company reorganization, the originals of which are now on file and of record in the office of said Commission."

6. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

"I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the transcript of the stenographer's notes of the hearing held May 3, 1944, at Washington, D. C., and Exhibits No. 66 to 89, both inclusive, filed at said hearing in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

7. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

"I, W. P. Bartel, Secretary of the Interstate Commerce Commission, do hereby certify that the attached

BLEED THROUGH

are true copies of the transcript of the stenographer's notes of the hearing held November 6, 7, 8 and 9, 1945, at Washington, D. C., and Exhibits No. 90 to 165, both inclusive, filed at said hearing, in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

8. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of the transcript of the stenographer's notes of the hearing held November 13, 14, 15, 16, 19, 20 and 21, 1945, at West Palm Beach, Florida, and Exhibits No. 166 to 216, both inclusive, filed at said hearing in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

9. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of the transcript of the stenographer's notes of the hearing held November 23, 26 and 27, 1945, at West Palm Beach, Florida, and Exhibits No. 217 to 242, both inclusive, filed at said hearing, in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

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Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

10. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of the following:

Transcript of the stenographer's notes of the hearing held November 28, 29 and 30, 1945, at West Palm Beach, Florida, and Exhibits No. 243 to 266, both inclusive, and 268 to 297, both inclusive, filed at said hearing; and

Exhibits No. 298 to 303, both inclusive, received pursuant to order of the Commission entered June 27, 1946,

in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

11. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of the following:

Memorandum of Guaranty Trust Company of New York, *et al.*, filed January 22, 1946;

Memorandum of Claude Pepper, Senator, filed February 15, 1946;

Memorandum of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed February 15, 1946;

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Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Brief of Board of County Commissioners of St. Johns County, Florida, filed February 13, 1946;

Brief of St. Joe Paper Company, filed February 14, 1946;

Brief of Greater Miami Chamber of Commerce, *et al.*, filed February 14, 1946;

Brief of Southern Railway Company, *et al.*, filed February 14, 1946;

Brief of Congressman J. Hardin Peterson, filed February 14, 1946;

Brief of The New York Trust Company, as trustee, filed February 15, 1946;

Brief of S. A. Lynch, *et al.*, filed February 15, 1946;

Brief of Atlantic Coast Line Railroad Company, filed February 15, 1946;

Brief of the City of New Smyrna Beach, Florida, filed February 15, 1946;

Brief of City of Fort Pierce, Florida, *et al.*, filed February 15, 1946; and

Brief of Jacksonville Chamber of Commerce, *et al.*, filed February 18, 1946,

in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

12. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

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Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

"I, W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of the following:

Petition of Atlantic Coast Line Railroad Company, filed May 20, 1946;

Petition of St. Joe Paper Company, filed June 7, 1946;

Answer of Atlantic Coast Line Railroad Company, filed June 19, 1946;

Notice of the Commission dated June 21, 1946, and accompanying summary and third supplemental report proposed by Ralph H. Jewell, Examiner;

Order of the Commission entered June 27, 1946;

Exceptions of Lorenzo C. Dilks, filed August 5, 1946;

Exceptions of F. K. Conn, filed August 19, 1946;

Exceptions of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed August 19, 1946;

Statement of Congressman J. Hardin Peterson, filed August 19, 1946;

Brief of Claude Pepper, Senator, filed August 19, 1946.

Exceptions and brief of the New York Trust Company, as Trustee, filed August 20, 1946;

Exceptions of S. A. Lynch, *et al.*, filed August 20, 1946;

Exceptions of Atlantic Coast Line Railroad Company, filed August 20, 1946;

BLEED THROUGH

Reply of E. N. Claughton, filed September 9, 1946;

Reply of S. A. Lynch, *et al.*, filed September 9, 1946;

Reply of Southern Railway Company, *et al.*, to exceptions, filed September 9, 1946;

Reply of Southern Railway Company, *et al.*, to 'Brief of Claude Pepper, Senator from the State of Florida,' and to 'Statement of Congressman J. Hardin Peterson as to the Examiner's Proposed Report,' filed September 9, 1946;

Brief of Board of County Commissioners of St. Johns County, Florida, filed September 9, 1946;

Reply of The Miami Chamber of Commerce, filed September 9, 1946;

Reply of Jacksonville Chamber of Commerce, *et al.*, filed September 9, 1946;

Reply of St. Joe Paper Company, filed September 9, 1946;

Statement of Joe Hendricks, Member of Congress, filed September 9, 1946;

Reply of The Greater Miami Traffic Association, filed September 9, 1946;

Reply of Atlantic Coast Line Railroad Company, filed September 9, 1946;

Reply of Fort Pierce, Florida, *et al.*, filed September 9, 1946;

Reply of the City of New Smyrna Beach, Florida, filed September 9, 1946;

Reply of Railway Labor Executives' Association, filed September 9, 1946;

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Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Petition of Seaboard Air Line Railroad Company, filed September 9, 1946;

Objection of Atlantic Coast Line Railroad Company, filed September 16, 1946;

Exceptions of Seaboard Air Line Railroad Company, filed October 9, 1946;

Transcript of the stenographer's notes of the oral argument heard October 9 and 10, 1946, at Washington, D. C.;

Letter dated New York, October 11, 1946, addressed to Interstate Commerce Commission, Washington 25, D. C., signed Francis T. P. Plimpton;

Letter dated New York, October 22, 1946, addressed to Interstate Commerce Commission, Washington 25, D. C., signed Jesse E. Waid; and

Supplemental order of the Commission entered November 12, 1946;

in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

13. The papers covered by a further certificate of the Secretary of the Interstate Commerce Commission dated the 2nd day of April, A. D. 1948, reading as follows:

"I W. P. BARTEL, Secretary of the INTERSTATE COMMERCE COMMISSION, do hereby certify that the attached are true copies of the following:

Notice of the Commission dated May 20, 1947, and summary and report and order of the Commission, filed and entered April 8, 1947;

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Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Statement of Atlantic Coast Line Railroad Company, filed June 4, 1947;

Petition of St. Joe Paper Company, filed June 6, 1947;

Petition of the City of Fort Pierce, *et al.*, filed June 9, 1947;

Preliminary petition of E. N. Claughton, filed June 9, 1947;

Petition of F. K. Conn, *et al.*, filed June 9, 1947;

Petition of Miami Chamber of Commerce, *et al.*, filed June 9, 1947;

Preliminary petition of Board of County Commissioners of St. Johns County, Florida, filed June 9, 1947;

Petition of Jacksonville Chamber of Commerce, *et al.*, filed June 9, 1947;

Petition of Seaboard Air Line Railroad Company, filed June 9, 1947;

Preliminary petition of City of New Smyrna Beach, Florida, filed June 9, 1947;

Petition of Brotherhood of Railroad Trainmen, filed June 9, 1947;

Petition of Railway Labor Executives' Association, filed June 9, 1947;

Petition of Southern Railway Company, *et al.*, filed June 9, 1947;

Petition of S. A. Lynch, *et al.*, filed June 9, 1947;

Preliminary petition of The New York Trust Company, as Trustee, filed June 10, 1947;

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Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Argument in support of preliminary petition of City of New Smyrna Beach, filed July 17, 1947;

Supplemental petition of Southern Railway Company, *et al.*, filed July 17, 1947;

Supplement to petition of St. Joe Paper Company, filed July 18, 1947;

Supporting argument of the City of Fort Pierce, Florida, *et al.*, filed July 18, 1947;

Supplement to petition of S. A. Lynch, *et al.*, filed July 21, 1947;

Supplementary petition of The New York Trust Company, as Trustee, filed July 21, 1947;

Supplemental petition of Miami Chamber of Commerce, *et al.*, filed July 21, 1947;

Petition of F. K. Conn, *et al.*, filed July 21, 1947;

Supplement to petition of Board of County Commissioners of St. Johns County, Florida, filed July 21, 1947;

Brief of E. N. Claughton, filed July 21, 1947;

Reply of Deposit Committee for First and Refunding Mortgage 5% Bonds, filed July 28, 1947;

Reply of Claude Pepper, Senator, filed July 29, 1947;

Reply of Atlantic Coast Line Railroad Company, filed July 29, 1947;

Reply of S. A. Lynch, *et al.*, filed July 29, 1947;

Order of the Commission entered October 7, 1947;

Transcript of the stenographer's notes of the oral argument held January 6, 7 and 8, 1948, at Washington, D. C.; and

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Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Report and order of the Commission, filed and entered March 25, 1948,

in Finance Docket No. 13170, Florida East Coast Railway Company Reorganization, the originals of which are now on file and of record in the office of said Commission."

14. Notice filed by Atlantic Coast Line Railroad Company, dated October 21, 1948, relating to the adoption by Atlantic Coast Line Railroad Company of the Plan of Reorganization, with attachments lettered A to G, inclusive.

15. Order, dated and filed April 29, 1948, fixing the time within which objections to the Plan of Reorganization and claims and fees incident to the reorganization may be filed.

16. Order, dated and filed October 11, 1948, fixing the date for the hearing on the Plan of Reorganization.

17. Report of the Trustees covering proof of the service of the Order of October 11, 1948, fixing the date for the hearing on the Plan of Reorganization, and publication thereof (three pages and verification only; attachments not to be included).

18. Order of the Honorable Joseph C. Hutcheson, Jr., Chief Judge of the Fifth Circuit, dated November 17, 1948 and filed November 22, 1948, designating and appointing the Honorable Samuel H. Sibley, United States Circuit Judge for the Fifth Circuit, to hold the District Court of the United States for the Southern District of Florida, in place or in aid of the judges of said District.

19. Objections to the Plan of Reorganization, viz.:

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Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Objections to the Reports and Orders of the Interstate Commerce Commission dated April 8, 1947, and March 25, 1948, filed by St. Joe Paper Company.

Objections of the Lynch Interests to the Modified Plan of Reorganization Embodied in the Third and Fourth Supplemental Reports of the Commission, and Claims for Equitable Treatment.

Objections of W. G. Welbon *et al.* to so-called Plan of Reorganization.

Motion to Refer Proceedings back to the Interstate Commerce Commission for Plan of Reorganization, and Objections to the Plan Submitted by the Interstate Commerce Commission, filed by F. K. Conn.

Objections of Chemical Bank & Trust Company and Howard B. Smith, as Successor Trustees under the First and Refunding Mortgage of the Debtor, dated September 1, 1924, to the Plan of Reorganization of the Debtor.

Objections of The New York Trust Company, as Trustee of Florida East Coast Railway Equipment Trust Series D, to Plan of Reorganization of the Debtor certified by the Interstate Commerce Commission, and Claims of said Trustee for Equitable Treatment.

Objections of Seaboard Air Line Railroad Company to the Plan of Reorganization of the Debtor.

Objections by Interveners Southern Railway System Lines to Modified Plan of Reorganization of the Debtor, Approved by the Interstate Commerce Commission.

Protest of Railway Labor Executives' Association, Intervenor.

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Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

20. Petition for Intervention of F. K. Conn as Party to the Proceedings.

21. Petition to Set Aside and Annul Third Supplemental Order of the Interstate Commerce Commission Filed in this Cause, Filed by F. K. Conn.

22. Petition for Intervention of President and Directors of The Manhattan Company and J. Bryson Aird, as Successor Trustees under Florida East Coast Railway Company First and Refunding Mortgage dated September 1, 1924.

23. Trancript of the hearing on the objections to the Plan of Reorganization, pages 1 to 1049, except as follows:

(a) Omit pages 35-116 and insert the following:

(Here followed argument as to assets claimed to be free of the lien of the Mortgages.)

(b) Omit from page 647, line 15 to page 1035, line 6, and insert:

(Here followed argument on the objections to the Plan.)

(c) Omit page 1037, line 5 (starting with the words "Various briefs") to page 1048, line 11, and insert:

(Here followed further argument on the objections to the Plan.)

24. All exhibits introduced at the hearing on the objections to the Plan of Reorganization, viz.:

Exhibits Nos. 1-22, both inclusive, of Atlantic Coast Line Railroad Company.

Exhibits Nos. 1-6, both inclusive, of Arthur M. Anderson, Harry C. Hagerty, Henry S. Sturgis and D. C.

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Borden, a Deposit Committee for the First and Refunding 5% Bonds of the Florida East Coast Railway Company, due 1974.

Exhibits Nos. 1-7, both inclusive, of St. Joe Paper Company.

Exhibits Nos. 1-33, both inclusive, of the Lynch interests.

25. The following documents filed in these proceedings, the same being designated for convenience by their respective numbers in the printed Court record:

Number	Date of Filing	Description
1	January 25, 1941	Petition.
2	January 25, 1941	Answer of Debtor.
3	January 31, 1941	Order.
69	June 1, 1941	Order Fixing Time for Filing Claims and Classifying Creditors.
144	January 22, 1942	Report of Trustees as to Claims Filed.
336	October 19, 1943	Order and Opinion Sustaining Objections to Plan of Reorganization, and Referring Same Back to Interstate Commerce Commission.
506	November 3, 1945	Application of Institutional Group Respecting Purchase by Trustees of First Mortgage Bonds.
507	December 14, 1945	Order Directing Trustees to Purchase First Mortgage Bonds of Debtor.
588	July 17, 1947	Order Respecting General Additions and Betterments for the year 1947.
595	July 25, 1947	Order Approving Financing of New Equipment and Conditional Sale Agreement.

BLEED THROUGH

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

619 January 6, 1948.....Report of Trustees Respecting Proposed Construction of Okeelanta Branch.

633 July 29, 1947.....Petition of Atlantic Coast Line Railroad Company for Leave to Intervene.

655 May 6, 1948.....Objections of St. Joe Paper Company to Intervention of Atlantic Coast Line.

656 May 14, 1948.....Amendment to Objections of St. Joe Paper Company.

662 May 18, 1948.....Order Respecting Additions and Betterments for the Year 1948.

663 May 18, 1948.....Order Granting Interventions, and Denying Petitions of First and Refunding Mortgage Trustees to Amend Previous Orders.

674 June 15, 1948.....Petition of St. Joe Paper Company for Allowance for Counsel Fees.

693 August 26, 1948.....Petition for Prepayment of First Mortgage Bonds.

697 July 30, 1948.....Petition of St. Joe Paper Company for Entry of Order Imposing Lien in favor of First and Refunding Mortgage Bondholders.

699 September 27, 1948....Answer of Atlantic Coast Line Railroad Company to Petition of St. Joe Paper Company.

700 September 28, 1948....Report of Trustees Giving Information Requested by St. Joe Paper Company.

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Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

Number	Date of Filing	Description
701	September 23, 1948	Application of Trustees for Authority to purchase 10 Diesel-electric Locomotives.
702	September 27, 1948	Answer of Atlantic Coast Line Railroad Company to Application of Trustees to Purchase Diesel Locomotives.
703	October 6, 1948	Order Authorizing Trustees to Purchase 10 Diesel-electric Locomotives and Directing Method of Financing.
704	September 23, 1948	Application of Trustees for Authority to Construct Buildings and Facilities at Miami and Lease Same to Acme Fast Freight, Inc.
705	October 6, 1948	Order Authorizing Trustees to Construct Buildings and Facilities at Miami and Lease Same to Acme Fast Freight, Inc.
715	October 26, 1948	Report and Order of Interstate Commerce Commission fixing Maximum Allowances of Compensation and Expenses for Period February 15, 1945 Through May 15, 1948.

26. Transcript of hearing on October 1, 1948, which resulted in the orders of October 6, 1948 (Document No. 703 and Document No. 705) referred to in the preceding paragraph.

27. Opinion and order of the Honorable Samuel H. Sibley, United States Judge Designate, dated January 22, 1949 and filed January 24, 1949, disapproving the Plan of Reorganization and referring the proceedings back to the Interstate Commerce Commission for further action.

BLEED THROUGH

Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company.

28. Notice of appeal of Atlantic Coast Line Railroad, filed February 21, 1949, from order filed January 24, 1949, disapproving the Plan of Reorganization and referring the proceedings back to the Interstate Commerce Commission for further action.

29. Order of the Honorable Samuel H. Sibley, United States Judge Designate, dated March 17, 1949, extending the time to file the record on appeal to May 3, 1949, and directing that certain original papers be sent to the Court of Appeals.

30. This Designation.

31. Statement of Points of Atlantic Coast Line Railroad Company.

Dated, Jacksonville, Florida, April 20, 1949.

McCarthy, Lane & Howell,
Atlantic National Bank Building
Jacksonville, Florida.

By Charles C. Howell, Jr.,
A Partner.

Charles Cook Howell,
Atlantic Coast Line Railroad Company
Wilmington, North Carolina.

Alexander & Green,
120 Broadway,
New York, N. Y.

By Edward W. Bourne,
A Partner.
Attorneys for Atlantic Coast Line
Railroad Company.

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Statement of Points of Atlantic Coast Line Railroad Company.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

Atlantic Coast Line Railroad Company, having heretofore filed a notice of appeal to the United States Court of Appeals for the Fifth Circuit from the order filed herein on January 24, 1949 disapproving the Plan of Reorganization of the Debtor and referring the proceedings back to the Interstate Commerce Commission for further action, and from every part of said order, hereby makes the following statement of points upon which it intends to rely upon said appeal:

1. The Court erred in refusing to approve the Plan of Reorganization.

2. The Court should have made the findings with respect to the Plan of Reorganization specified in subsection (e) of Section 77 of the Bankruptcy Act.

BLEED THROUGH

Statement of Points of Atlantic Coast Line Railroad Company.

3. The finding of the Commission that the Plan of Reorganization will be compatible with the public interest was made in conformity with the statutory mandates and is supported by material evidence.

4. The Commission's valuation of the property of the Debtor dealt with in the Plan of Reorganization, in terms of cash and securities of Atlantic Coast Line Railroad Company provided for by the Plan of Reorganization, was made in conformity with the statutory mandates and is supported by material evidence.

5. The Court erred in finding that Section 77 of the Bankruptcy Act does not authorize what the Court denominated a "forced merger".

6. The Court erred in disapproving the Plan of Reorganization on the ground that "it is testified under oath and is plainly apparent that it will be rejected almost unanimously by the refunding bondholders".

7. The Court erred in finding that "the plan is not fair and equitable and does not afford due recognition of the rights of the refunding bondholders".

8. In concluding to disapprove the Plan of Reorganization the Court acted, as appears from the Court's opinion, under many misapprehensions relating to the past history of the receivership and reorganization proceedings in the District Court, the proceedings before the Interstate Commerce Commission, the bases for the Commission's approval of the Plan of Reorganization, the positions of the parties and the reasons therefor, the earning power and value of the property of the Debtor, the earning power and value of the property of the Atlantic Coast Line Railroad Company and other matters; many of said misapprehensions

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related to matters which were not material to the issues before the Court for decision, but the Court treated said matters, and other immaterial matters as material to such issues.

9. The Court should have approved the Plan of Reorganization.

Dated, Jacksonville, Florida, April 20, 1949.

McCarthy, Lane & Howell,
Atlantic National Bank Building,
Jacksonville, Florida.

By Charles C. Howell, Jr.,
A Partner.

Charles Cook Howell,
Atlantic Coast Line Railroad Company,
Wilmington, North Carolina.

Alexander & Green,
120 Broadway,
New York, N. Y.

By Edward W. Bourne,
A Partner.

Attorneys for Atlantic Coast Line Railroad Company.

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Designation of Contents of Record on Appeal by Appellants Arthur M. Anderson, H. C. Hagerty, H. S. Sturgis and D. C. Borden, a Deposit Committee for First and Refunding Mortgage 5% Bonds of Florida East Coast Railway Company Due 1974.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

To the Clerk of the above-named Court:

You are hereby requested, pursuant to Rules 75(a) and 75(k) of the Federal Rules of Civil Procedure, to include in the Record on Appeal of the above-named Appellants to the United States Court of Appeals for the Fifth Circuit from the Order filed herein on January 24, 1949, disapproving the Plan of Reorganization of the Debtor and referring the proceedings back to the Interstate Commerce Commission for further action the following portions of the record, proceedings and evidence herein:

1. All those portions of the record, proceedings and evidence designated by Appellant, Atlantic Coast Line Railroad Company in its "Designation of Contents of Record on Appeal" dated April 20, 1949.

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Designation of Contents of Record by Deposit Committee.

2. Notice of Appeal of Arthur M. Anderson, H. C. Hagerty, H. S. Sturgis and D. C. Borden, a deposit committee for First and Refunding Mortgage 5% Bonds, dated February 21, 1949, from order filed January 24, 1949 disapproving the Plan of Reorganization and referring the proceedings back to the Interstate Commerce Commission for further action.

3. This Designation.

4. Statement of Points of Deposit Committee for First and Refunding Mortgage 5% Bonds.

Dated, Jacksonville, Florida, April 28, 1949.

STOCKTON, ULMER & MURCHISON,
Barnett National Bank Building,
Jacksonville, Florida.

By (s) HERMAN ULMER,
A Partner.

DAVIS POLK WARDWELL SUNDERLAND & KIENDL,
15 Broad Street,
New York 5, New York.

By (s) EDGAR G. CROSSMAN,
A Partner.
Attorneys for Appellants Arthur M. Anderson, H. C. Hagerty, H. S. Sturgis and D. C. Borden.

BLEED THROUGH

Statement of Points of Appellants Arthur M. Anderson, H. C. Hagerty, H. S. Sturgis and D. C. Borden, a Deposit Committee for First and Refunding Mortgage 5% Bonds of Florida East Coast Railway Company Due 1974.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

The Appellants, having heretofore filed a notice of appeal to the United States Court of Appeals for the Fifth Circuit from the order filed herein on January 24, 1949 disapproving the Plan of Reorganization of the Debtor and referring the proceedings back to the Interstate Commerce Commission for further action, and from every part of said order, hereby make the following statement of points upon which they intend to rely upon said appeal:

1. The Court erred in refusing to approve the Plan of Reorganization.

2. The Court should have made the findings with respect to the Plan of Reorganization specified in subsection (e) of Section 77 of the Bankruptcy Act.

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3. The finding of the Commission that the Plan of Reorganization will be compatible with the public interest was made in conformity with the statutory mandates and is supported by material evidence.

4. The Commission's valuation of the property of the Debtor dealt with in the Plan of Reorganization, in terms of cash and securities of Atlantic Coast Line Railroad Company provided for by the Plan of Reorganization, was made in conformity with the statutory mandates and is supported by material evidence.

5. The Court erred in finding that Section 77 of the Bankruptcy Act does not authorize what the Court denominated a "forced merger".

6. The Court erred in disapproving the Plan of Reorganization on the ground that "it is testified under oath and is plainly apparent that it will be rejected almost unanimously by the refunding bondholders".

7. The Court erred in finding that "the plan is not fair and equitable and does not afford due recognition of the rights of the refunding bondholders".

8. In concluding to disapprove the Plan of Reorganization the Court acted, as appears from the Court's opinion, under many misapprehensions relating to the past history of the receivership and reorganization proceedings in the District Court, the proceedings before the Interstate Commerce Commission, the bases for the Commission's approval of the Plan of Reorganization, the positions of the parties and the reasons therefor, the earning power and value of the property of the Debtor, the earning power and value of the property of the Atlantic Coast Line Railroad Company and other matters; many of said misapprehensions related to matters which were not material to the issues

BLEED THROUGH

before the Court for decision, but the Court treated said matters, and other immaterial matters, as material to such issues.

9. The Court should have approved the Plan of Reorganization.

Dated, Jacksonville, Florida, April 28, 1949.

STOCKTON, ULMER & MURCHISON,
Barnett National Bank Building,
Jacksonville, Florida.

By (s) HERMAN ULMER,
A Partner.

DAVIS POLK WARDWELL SUNDERLAND & KIENDL,
15 Broad Street,
New York 5, New York.

By (s) EDGAR G. CROSSMAN,
A Partner.
Attorneys for Appellants Arthur M. Anderson, H. C. Hagerty, H. S. Sturgis and D. C. Borden.

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Request of Atlantic Coast Line Railroad Company that specified portions of the record on appeal be printed prior to its transmission to the Court of Appeals.

IN THE

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

To the Clerk of the above-named Court:

You are hereby requested, pursuant to paragraph 10 of Rule 23 of the Rules of the United States Court of Appeals for the Fifth Circuit, to cause the following specified portions of the record on the appeal from the Order filed herein on January 24, 1949, disapproving the Plan of Reorganization of the Debtor and referring the proceedings back to the Interstate Commerce Commission for further action, to be printed or photo-lithographed prior to its transmission to said Court, the references herein to the "Designation" being to the "Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company", dated April 20, 1949:

1. Copies of the Reports of the Interstate Commerce Commission dated January 8, 1945, April 8, 1947 and March 25, 1948 and of the Commission's Supplemental Order dated March 25, 1948, as printed in the Reports of the Interstate Commerce Commission, entitled "Florida East Coast Railway Company Reorganization", 261 I. C. C. 151-193, 267 I. C. C. 295-391 and 267 I. C. C. 729-759.

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Request of Atlantic Coast Line Railroad Company that specified portions of the record on appeal be printed prior to its transmission to the Court of Appeals.

2. The following items of the Designation: 15, 16, 18, 19 (omitting any notices of service, mailing lists, indices, covers and certificates of service), 20, 21, 22 (omitting verifications), 23, 27, 28, 30 and 31.

3. The following, filed by Arthur M. Anderson, H. C. Hagerty, H. S. Sturgis and D. C. Borden, a deposit committee for First and Refunding 5% Bonds of Florida East Coast Railway Company Due 1974: Notice of Appeal to the United States Court of Appeals for the Fifth Circuit from the Order filed herein on January 24, 1949 disapproving the Plan of Reorganization of the Debtor and referring the proceedings back to the Interstate Commerce Commission for further order; Designation of Contents of Record and Statement of Points.

4. Copies of the Exhibits enumerated in Item 24 of the Designation.

Dated, Jacksonville, Florida, May 3, 1949.

McCarthy, Lane & Howell,
Atlantic National Bank Building,
Jacksonville, Florida.

By Charles C. Howell, Jr.
A Partner.

Charles Cook Howell,
Atlantic Coast Line Railroad Company,
Wilmington, North Carolina.

Alexander & Green,
120 Broadway,
New York, N. Y.

By Edward W. Bourne,
A Partner.
Attorneys for Atlantic Coast Line Railroad Company.

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Ex. No. 1
48277
F.E.C. Ry Co
APR 1 1949
CLERK U.S. DISTRICT COURT

FLORIDA EAST COAST RAILWAY COMPANY

FREIGHT TONNAGE AND REVENUE

1939-1947

Year	Revenue Tons Carried		Freight Revenue	
	Thousands of Tons	Index Nos.(A)	Thousands of Dollars	Index Nos.(A)
1939	1,464	76	$ 5,894	76
1940	1,747	91	6,443	84
1941	1,822	95	6,486	84
1942	3,465	180	12,056	156
1943	5,913	307	17,057	222
1944	4,977	259	15,930	207
1945	5,693	302	14,280	186
1946	4,780	248	16,161	210
1947 (Est.)	4,500	234	16,670	217
Average 1941-1945				
Receivers' estimate	1,924	100	7,691	100
Actual	4,014	209	13,162	171

(A) In computing index numbers, the Receivers' estimate for the 5-year period, 1941-1945 (upon which the Commission's plan is predicated), has been taken as 100.

a.c.f Ex No 2

COVERDALE & COLPITTS

EXHIBIT 2
F.E.C.Ry Co
FILED IN EVIDENCE
JAN 13 1948

FLORIDA EAST COAST RAILWAY COMPANY

PASSENGER REVENUE AND TOTAL OPERATING REVENUE

1939-1947

Year	Passenger Revenue		Total Operating Revenue	
	Thousands of Dollars	Index Nos.(A)	Thousands of Dollars	Index Nos.(A)
1939	$ 2,409	69	$ 9,861	73
1940	3,094	88	10,749	81
1941	3,713	106	11,499	95
1942	7,144	204	20,858	169
1943	13,169	376	32,979	265
1944	13,860	380	31,730	258
1945	12,720	363	29,371	240
1946	8,277	236	26,543	216
1947(Est.)	7,700	220	26,770	218
Average 1941-1945				
Receivers' estimate	5,500	100	12,300	100
Actual	10,000	286	25,240	205

(A) In computing index numbers, the Receivers' estimate for the 5-year period, 1941-1945 (upon which the Commission's plan is predicated), has been taken as 100.

A.C.L. Ex No 9

COVERDALE & COLPITTS

EXHIBIT 3
F.E.C. Ry Co
VS
FILED IN EVIDENCE
JAN 1 1 1943

RAILWAY OPERATING REVENUE COMPARISONS

1946 VS 1939 AND 1940

	Average 1939-1940	1946	Per cent Increase
	(Thousands of Dollars)		
Florida East Coast	$ 10,005	$ 26,543	165.3
Seaboard Air Line	46,327	112,403	142.6
Atlantic Coast Line	52,044	126,105	142.3
Southern Railway	103,530	213,041	106.9
Central of Georgia	15,965	31,703	98.6
Louisville & Nashville	93,175	169.666	82.1
Southern Region	508,654	1,061,621	100.8
All Class I Railroads	4,145,803	7,627,314	84.0

Sources: I.C.C. "Statistics of Railways in the U.S." and A.A.R., Bureau of Railway Economics "Railway Revenues and Expenses"

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a c l Ex no 4

EXHIBIT 4
A. C. L. R. Co.
vs
FILED IN EVIDENCE
JAN 11 1949
Clerk

RAILWAY OPERATING REVENUE COMPARISONS

JANUARY TO OCTOBER, INCLUSIVE
1947 VS 1939 AND 1946

	January-October, Inclusive		Per cent Increase
	Average 1939-1940	1947	
	(Thousands of Dollars)		
Florida East Coast	$ 8,237	$ 22,247	170.1
Seaboard Air Line	37,363	97,794	160.3
Atlantic Coast Line	42,685	105,548	147.3
Southern Railway	84,093	182,692	117.2
Louisville & Nashville	76,497	154,679	102.2
Central of Georgia	13,217	26,490	100.4
Southern Region	433,448	979,480	126.0
All Class I Railroads	3,410,621	7,121,942	108.8

SOURCE: A.A.R., Bureau of Railway Economics, "Railway Revenues and Expenses"

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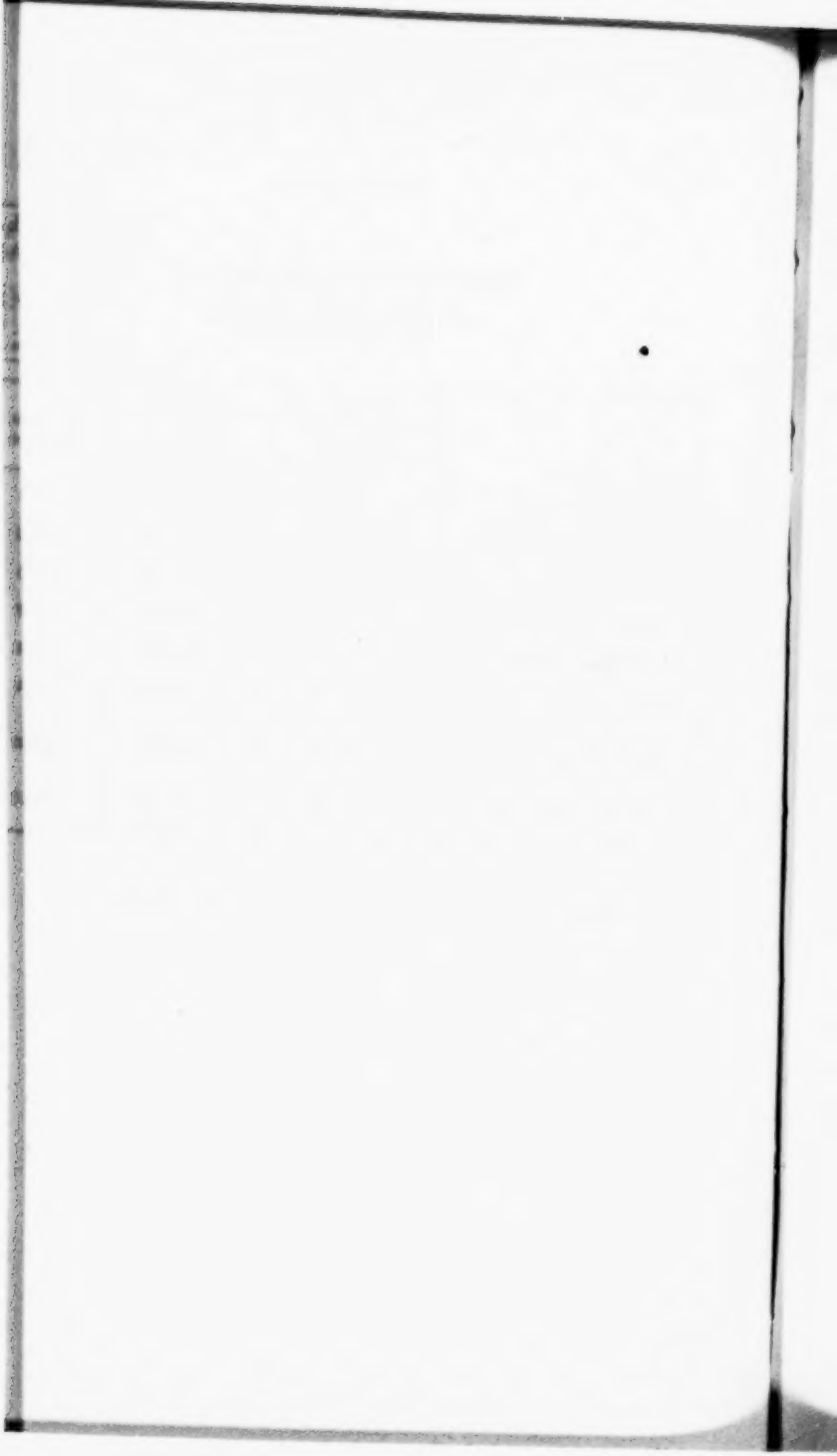

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GOVERNMENT'S EXHIBIT

a.e.f. Ex no 5

EXHIBIT 5
U.S. v. E.C. Royster Co. 6
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JANUARY TO OCTOBER, INCLUSIVE
1947 VS 1939 AND 1940

	January-October, Inclusive		
	Average 1939-1940	1947	Per cent Increase
	(Thousands of Dollars)		
Florida East Coast	$ 4,960	$ 13,709	176.4
Seaboard Air Line	28,337	77,421	173.0
Atlantic Coast Line	31,993	78,817	146.7
Southern Railway	70,132	153,198	118.4
Central of Georgia	10,732	21,697	101.8
Louisville & Nashville	66,580	132,467	99.1
Southern Region	399,984	799,870	122.2
All Class I Railroads	2,788,995	5,787,917	107.5

SOURCE: A.A.R., Bureau of Railway Economics, "Railway Revenues and Expenses"

a c J. Ex no 6

COVERDALE & COLPITTS

EXHIBIT 76
F.E.C. Ry Co
vs
FILED IN EVIDENCE
JAN 1 1 1949 193
EDWIN R. WILLIAMS, Clerk

PASSENGER REVENUE COMPARISONS

JANUARY TO OCTOBER, INCLUSIVE
1947 VS 1939 AND 1940

	January-October, Inclusive		Per cent Increase
	Average 1939-1940	1947	
	(Thousands of Dollars)		
Atlantic Coast Line	$ 6,372	$ 18,705	193.5
Florida East Coast	2,402	6,492	170.3
Louisville & Nashville	5,113	12,948	153.2
Southern Railway	7,325	17,596	140.3
Seaboard Air Line	5,682	13,327	134.5
Central of Georgia	1,055	2,484	134.2
Southern Region	40,077	107,495	168.2
All Class I Railroads	347,498	800,200	130.3

Source: A.A.R., Bureau of Railway Economics, "Railway Revenues and Expenses"

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A.C.L. Ex no 7

COVERDALE & COLPITTS

FLORIDA EAST COAST RAILWAY COMPANY

NET AVAILABLE FOR INTEREST
ADJUSTED FOR NONRECURRING ITEMS

YEAR 1947

EXHIBIT 7
F.E.C. Ry Co
vs
FILED IN EVIDENCE
JAN 1 1 19[illegible] 193
EDWIN H. WILLIAMS, Clerk

	(Thousands of Dollars)
Estimated net available for interest (A)	$ 163
Adjustments (additions)	
1. Amortization charges for defense projects (B)	64
2. Net charges to operating expenses account new rail program (C)	948
3. Charges to operating expenses account Okeechobee Branch retirements (C)	1,020
4. Estimated deferred maintenance made up in 1947 (C)	217
5. Estimated net traffic loss due to freezes, hurricanes and floods (50% of $1,384,000) (D)	692
6. Estimated cost of restoration account flood damage (D)	138
Adjusted net available for interest	$3,242
7. Further adjustment to exclude the interim freight rate increase granted in October, 1947 and the wage increases effective in September and November, 1947 (D)	402
Adjusted net available for interest (after adjustment No. 7)	$3,644

Sources:

(A) Based on Trustee's estimate of net railway operating income.
(B) Estimate based on 11 months report of "Revenues and Expenses" to I.C.C.
(C) Estimates furnished by Trustee of F.E.C.
(D) Based on information furnished by Trustee of F.E.C.

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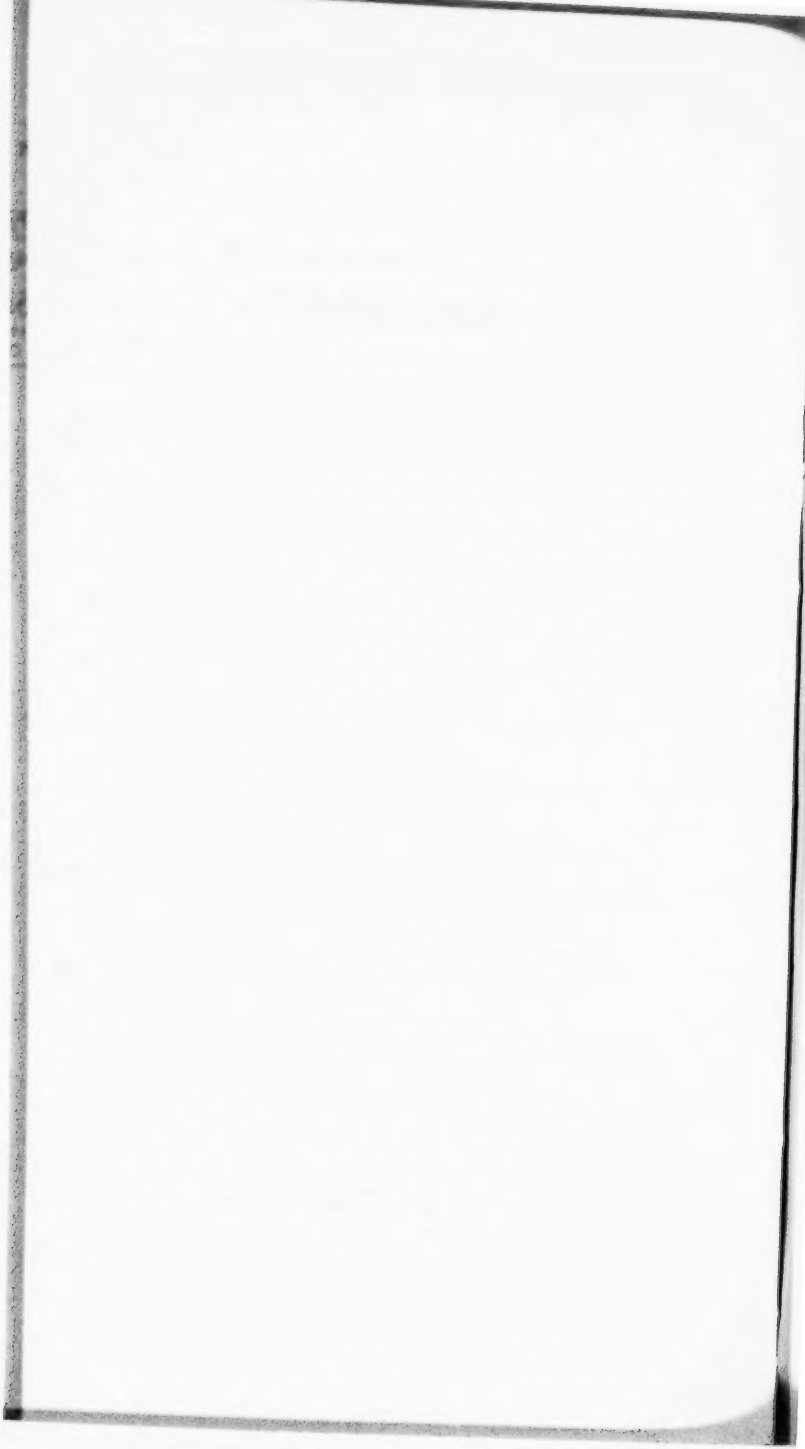

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COVERDALE & COLPITTS

EXHIBIT 8
F.E.C. Ry Co
vs
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JAN 1 1 1949
Edwin H. Williams, Clerk

INCREASE IN POPULATION

COUNTIES SERVED BY FLORIDA EAST COAST RAILWAY COMPANY VS STATE OF FLORIDA AND ENTIRE UNITED STATES

Counties	Total Population			Per cent Increase	
	1930	1940	Jan. 1, 1947	1930-40	1940-47
	(In Thousands)				
Duval	155.5	210.1	305.4	35.1	45.4
St. Johns	18.7	20.0	24.1	7.0	20.5
Flagler	2.5	3.0	3.0	20.0	
Putnam	18.1	18.7	19.9	3.3	6.4
Volusia	42.8	53.7	65.2	25.5	21.4
Seminole	18.7	22.3	27.4	19.3	22.9
Orange	49.7	70.1	96.8	41.0	38.1
Brevard	13.3	16.1	21.6	21.1	34.2
Osceola	10.7	10.1	11.8	-5.6	16.8
Indian River	6.7	9.0	10.2	34.3	13.3
Okeechobee	4.1	3.0	3.2	-26.8	6.7
St. Lucie	7.1	11.9	14.5	67.6	21.8
Martin	5.1	6.3	6.8	23.5	7.9
Palm Beach	51.8	80.0	125.3	54.4	56.6
Broward	20.1	39.8	56.2	98.0	41.2
Dade	143.0	267.7	351.5	87.2	31.3
Total	567.9	841.8	1,142.9	48.2	35.8
State of Florida	1,468.2	1,897.4	2,510.0	29.2	32.3
United States	122,775.0	131,669.3	139,621.8	7.2	6.0

Sources: 1930-1940 - Sixteenth Census of the U.S., Vol. I.
Jan. 1, 1947 - Estimated in Sales Management Survey of Buying Power, May 10, 1947.

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COVERDALE & COLPITTS

EXHIBIT 9
F.E.C. Ry. Co.
vs
FILED IN EVIDENCE
JAN 1 1 1949
Ernest P. Williams, Clerk

INCREASE IN LAND IN FARMS*

COUNTIES SERVED BY FLORIDA EAST COAST RAILWAY COMPANY VS STATE OF FLORIDA AND ENTIRE UNITED STATES

Counties	1930	1940	1945	Per cent Increase 1930-40	Per cent Increase 1940-45
	(Acres)				
Duval	44,608	61,067	66,000	36.9	8.1
St. Johns	22,935	33,946	117,000	48.0	244.7
Flagler	13,463	30,786	232,000	128.7	653.6
Putnam	67,508	69,073	134,000	2.3	94.0
Volusia	76,681	265,286	234,000	245.4	-11.1
Seminole	34,471	65,744	173,000	90.7	163.1
Orange	102,347	209,835	421,000	105.0	100.6
Brevard	25,608	170,939	200,000	567.5	17.0
Osceola	73,608	488,588	813,000	546.2	66.4
Indian River	47,022	112,877	151,000	140.1	33.8
Okeechobee	28,142	171,620	265,000	509.8	54.4
St. Lucie	19,013	154,668	292,000	713.5	88.8
Martin	7,977	37,204	176,000	391.0	373.0
Palm Beach	34,576	80,175	278,000	131.9	246.7
Broward	24,139	77,359	108,000	221.3	39.2
Dade	50,620	70,303	78,000	39.3	10.6
Total	674,318	2,097,870	3,738,000	211.1	78.2
State of Florida	5,086 617	8,337,708	13,084,000	63.9	56.9
United States	986,771,016	1,060,852,374	1,141,615,000	7.5	7.6

* As defined by the Census Bureau.

Sources: 1930 and 1940 - Sixteenth Census of the United States, Vol. I, Part 3.
1945 - County Data Book, Supplement to the Statistical Abstract of the United States.

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A. C. L. Exhibit 10

EXHIBIT 10
F. E. C. Ry. Co.
VS
FILED IN EVIDENCE

	Period		Increase	
	ida	United States	Florida	U.S.
Population				
Total population	,510	139,622	32.3	6.0
Income				
Effective buying inco	,478	160,193	224.3	136.3
Total income payments	,387	152,704	191.5	116.3
Net salaries and wage	,523	98,692	226.8	125.1
Estimated agricultural	342	15,094	327.5	184.6
Business and Industry				
Construction contracts	,027	3,299,303	15.0	-7.1
Pay rolls in manufactu	233	37,762	294.9	186.3
Mineral production	,852	7,015,279	67.3	66.6
Business telephones	,420	8,316,365	31.2	21.9
Nonagricultural employ	452	35,219	25.2	19.7
Electric power output	,663	225,643	131.6	73.1
Retail sales	,629	96,529,760	148.8	129.6
Finance				
Bank deposits	,806	165,614	338.3	142.8
Bank debits (Florida	,229	350,606	168.6	118.0
Bank clearings (Jacks	,568	696,275	267.8	139.9
Agriculture				
Total value of all li	76	9,635	153.3	87.7
Carlot shipments, all and vegetables	,362	1,026.865	54.9	36.2 ~~35.1~~
Miscellaneous				
Domestic electric cus	426	28,117	49.5	17.3
Residential telephone	131	15,012,035	61.1	35.1
Gross postal receipts	,561	1,216,088	128.5	72.9

Coverdale & Colpitts
Consulting Engineers
120 Wall St., New York

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EXHIB. 11
F.E.C. Ry. Co.

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JAN 11 1949
EDWIN R. WILLIAMS, Clerk

January 7, 1948

COMPARISON OF ATLANTIC COAST LINE
AND FLORIDA EAST COAST
MAINTENANCE OF WAY EXPENDITURES

	Ten Months Ended Oct. 31 1946 (000 omitted)	1947	% Increase or Decrease
Atlantic Coast Line	$25,621	$22,789	-11.05
Florida East Coast	3,267	4,688	+43.49
Florida East Coast (excluding Okeechobee Branch Retirements)	3,267	3,833	+17.32

If the Atlantic Coast Line Maintenance of Way ratio had been maintained during the first ten months of 1947, Maintenance of Way would have been $26,176,000, or an increase of $3,387,000.

If the Atlantic Coast Line had maintained its Maintenance of Way ratio during the first ten months of 1947, it would have had a deficit in Net Railway Operating Income of $2,189,000 instead of an increase of $1,198,000.

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EXHIBIT 12
F.E.C. Ry. Co.

January 7, 1948.

JAN 1 1 1948
EDWIN A. WALKER, Clerk

CALCULATIONS INDICATING PROBABLE NET AVAILABLE FOR INTEREST OF FLORIDA EAST COAST DURING 1948 ASSUMING 1947 LEVEL OF TRAFFIC.

1947 Adjusted Net Available	$3,644,000
Plus Increases in Rates - Interim Freight 17½% (a)	2,876,000
Passenger approx. 10% (b)	770,000
Interim Mail Pay 25% (c)	128,000
Sub total	$7,418,000
Less Increases in Wages 15½¢ per hour (d)	1,750,000
Less Increases in Payroll Taxes	153,000
Balance - Estimated Net Available for Interest in 1948	$5,515,000

Less whatever increases in prices of materials and supplies are not compensated for by the permanent increase in freight and mail pay rates.

(These calculations do not reflect the non-recurring items, such as charges in connection with the improvement program.)

(a) - 17½% of 1947 Freight revenue ($16,670,000 - $236,000)

(b) - 10% of 1947 Passenger revenue ($7,700,000)

(c) - 25% of 1947 Mail revenue ($514,000)

(d) - Applied to 1946 hours.

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EXHIBIT 13
S.E.C. Ry Co
JAN 1 1 1949
EDWIN H. WILLIAMS, Clerk

January 7, 1948.

VARIOUS PROPOSALS WITH REFERENCE TO CAPITAL STRUCTURES BY THE ST. JOE PAPER COMPANY AND RELATED INTERESTS.

1. Plan filed with Court February 5, 1941, which the Court refused to transmit to the Commission:

Equipment Trusts (as of September 1, 1940)	$ 1,358,000
First Mortgage Fixed Interest Bonds	12,000,000
Second Mortgage 3% Fixed Interest Bonds (to be purchased by the duPont estate)	3,000,000
Total Fixed Interest Obligations	$16,358,000
Income Bonds	9,000,000
Total Debt	$25,358,000
Common Stock	95,000 shares

2. Plan filed with Commission dated March 1, 1941, as follows:

Equipment Trusts (as of September 1, 1940)	$ 1,358,000
First Mortgage Fixed Interest Bonds	12,000,000
Income Bonds	9,000,000
Total Debt	$22,358,000

Common Stock authorized - 1,000,000 shares without par value. (Of the common stock authorized, 760,000 shares were to be issued and 240,000 shares to be retained as treasury stock.)

3. Petition for Modification to Commission's Plan of April 6, 1942, objecting to reduction in capitalization to $37,000,000 and apparently contending it should be around $58,000,000 and objecting also to reducing Income Bonds from $9,000,000 to $4,500,000.

4. Since October 5, 1943, after the Company had acquired control of the bonds, it has advocated a debt-free reorganization - no fixed interest bonds, no income bonds, no preferred stock, but all common stock with no increase in total capitalization over that proposed by the Commission.

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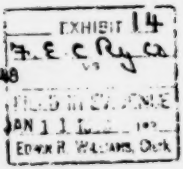

January 7, 1948

COMPARISON OF PLANS IN COMMISSION REPORTS

1. Original report (April 6, 1942)

Fixed interest bonds	$ 12,000,000
Contigent interest bonds	4,500,000
No-par stock	18,508,000
Additional bonds for improvements	6,000,000
Total	$ 41,008,000

2. Second Supplemental Report (January 8, 1945)

Contigent interest bonds	$ 20,250,000
Common stock	20,250,000
Total	$ 40,500,000

3. Examiner's Proposed Report (June 21, 1946)

Contigent interest bonds	$ 20,250,000
Common stock	20,250,000
Total	$ 40,500,000

4. Third Supplemental Report (April 8, 1947)
(from Atlantic Coast Line)

Cash	$ 4,125,000
Fixed interest bonds	13,500,000
Income bonds	7,875,000
Preferred stock	9,000,000
Common stock	6,000,000
Total	$ 40,500,000

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EXH 3[illegible] 15
T. P. & C. Ry. Co.
FILED
JAN 1 1 1949
Ethel [illegible] Clerk

January 7, 1948.

MINIMUM CAPITALIZATION PROPOSED
BY THE LYNCH INTERESTS
(Excluding Equipment Obligations)

First Mortgage Bonds	$12,000,000
Income Bonds, 4½%	12,000,000
Preferred Stock 5%	13,500,000
Common Stock (210,000 shares at stated value of $50.00 per share)	10,500,000
	$48,000,000

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Reprint of December 15, 1948

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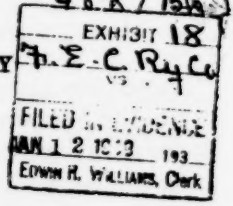

FLORIDA EAST COAST RAILWAY COMPANY
REORGANIZATION

F. D. 13170

SUMMARY OF ARGUMENT IN BEHALF OF ATLANTIC COAST LINE RAILROAD COMPANY—JANUARY 7, 1948

The Commission's Report of April 8, 1947 correctly states the Commission's statutory duty:[1]

> "Under the statute we are charged with the dual duty of promulgating a plan which will be fair and equitable to the creditors and which will be compatible with the public interest."

This statement is based squarely on explicit provisions of Section 77 of the Bankruptcy Act and decisions of the Supreme Court. If the plan approved by the Commission be "compatible with the public interest" and "fair and equitable" to the creditors,[2] the Commission has discharged its statutory responsibilities.

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The Commission's Report also correctly says:[3]

> "In our informed judgment, we must determine the value of the property, and this value, expressed in terms of securities or cash, is distributed to the creditors in the order of their priority."

Some of the petitioners, particularly the St. Joe Paper Company, challenge this and say that there is no power to approve and carry out a plan against the wishes of the holders of a large majority in amount of the First and Refunding Bonds. On the argument on October 10, 1946 Mr. Patterson said:[4]

> "Property rights generally can be divested, as I understand it, only in one of three ways. One is by Government power of eminent domain, and the other is by purchase, or sale; and

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[1] Sheet 12.
[2] It is not contended that the stockholders have claims of any value.
[3] Sheet 12.
[4] Transcript, p. 4672.

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third, as a result of some contract, or relationship created by law, such as would result in a judicial sale, or foreclosure sale or what not.

"And so our position here is that our rights cannot be divested except in one of those customary methods."

What has happened since Mr. Patterson made that argument?

In the *New Haven* reorganization the property of the Old Colony Railroad Company,[5] subject to the lien of the Old Colony First Mortgage, has been transferred to the reorganized New Haven despite a 50.60% majority adverse vote of the Old Colony First Mortgage bondholders, who had exactly the same kind of interest in the Old Colony property which the St. Joe Paper Company has in the Florida East Coast. The Circuit Court of Appeals sustained the confirmation of the plan[6] and the Supreme Court thought that any question presented was so lacking in substance that it denied certiorari.[7]

In the *Rock Island* reorganization the way has been cleared, by final judicial decisions, for the transfer to a new Rock Island corporation of property which is subject to the lien of the Little Rock & Hot Springs Western First Mortgage, despite an 80.62% adverse vote of the Little Rock bondholders. The Little Rock bondholders have the same interest in the property subject to their Mortgage as the Florida East Coast bondholders have in "their property", but despite their adverse vote the Circuit Court of Appeals approved and confirmed the plan[8] and the Supreme Court denied certiorari.[9]

In the *Central of Georgia* reorganization six classes of creditors failed to cast the statutory two-thirds vote in favor of the plan and a

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[5] A lessor-subsidiary, whose lease had been rejected.

[6] *Old Colony Bondholders* v. *New York, New Haven & H. R. R. Co.* (C. C. A. 2, 1947) 161 F. (2d) 413.

[7] *Protective Committee, etc.* v. *New York, New Haven & H. R. R. Co.* (1947) 67 S. Ct. 1754.

[8] *Chicago, Rock Island & Pacific Railway Company* v. *Fleming* (C. C. A. 7, 1946) 157 F. 2d, 241; *In Re Chicago, Rock Island & Pacific Ry. Co.* (C. C. A. 7, 1947) 160 F. 2d, 942. The argument in the Circuit Court of Appeals took place after the vote on the plan. It was pointed out that the Little Rock bondholders had voted to reject it. The Court said (157 F. (2d) 249): "It matters not that this group by vote has rejected the allocations it is to receive, for adequate provision has been made for these creditors." Consequently no appeal was taken by representatives of the Little Rock bondholders from the order confirming the plan. But unsuccessful appeals were taken by representatives of the Convertible Bonds, who had cast a 75.78% adverse vote and also by the Debtor, which purported to act on behalf of the various creditors as well as the stockholders, and which relied, among other things, on the adverse vote of the Little Rock bondholders.

[9] *The Chicago, Rock Island & Pacific Ry. Co.* v. *Fleming* (1946) 329 U. S. 780; *Harrison* v. *Fleming* (1946) 329 U. S. 780; *Axelrod* v. *Fleming* (1947) 67 S. Ct. 632; *Chase* v. *Cheston, Chicago, Rock Island & Pacific Ry. Co.* v. *Metropolitan, Axelrod* v. *Fleming* (1947) 68 S. Ct. 21-25; rehearing denied, 68 S. Ct. 163.

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majority of four classes voted to reject it, the adverse percentage being 100% in the case of one small class. The most important class,[10] the holders of the Consolidated Mortgage Bonds, cast a 50.93% adverse vote and their legal interests, like those of other classes casting adverse votes, were indistinguishable from those of the Florida East Coast bondholders. As in the *Rock Island* case, the Alleghany Corporation opposed confirmation, but the plan was confirmed by the District Court and no appeal was taken, so that it will be carried out shortly.

There cannot be the slightest question that under Section 77 of the Bankruptcy Act the bondholders' "property", consisting of interests represented by mortgage bonds, can be taken from them over their objection in exchange for securities under a plan which is found to be "fair and equitable" as well as "compatible with the public interest."

• • • •

The dissenting expression refers to the danger of "prolonged litigation."[11] Speculation about that is futile and outside the Commission's province. Threats by the St. Joe Paper Company to take the case to the Supreme Court seem hysterical, in the light of the Supreme Court's refusal to review the *New Haven* and the *Rock Island* cases. There is no reason to suppose that adherence by the Commission to its decision of April 8, 1947 is likely to cause any more prolonged litigation than an approval of a plan for an independent reorganization. A sound decision is the most effective help in shortening litigation

• • • •

The petitioners have referred to the "absolute priority" rule and it is mentioned in the dissenting expression. The Commission's Report says:[12]

> "The priority rule would be transgressed only where the security holder in the order of his priority fails to receive 'from that which is available for the satisfaction of his claim the equitable equivalent of the rights surrendered.' That does not occur here, for all of the securities to be issued by the Coast Line and all of the cash to be paid by the Coast Line will be delivered to the First and Refunding Bondholders and the junior creditors and stockholders will receive nothing."

The Commission thus correctly stated the "absolute priority" rule, which requires only that whatever may be available for distribution

[10] In terms of the value of the allotments made under the plan.
[11] Sheet 92.
[12] Sheet 13.

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be distributed in accordance with the priorities. And the Report correctly pointed out that under the plan the priorities would be respected as required by law. This subject is fully covered in the Coast Line's Reply at pages 25-31 and Appendix A thereto.

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The dissenting expression suggests that there should be "a public sale at which other bidders, including the bondholders of the debtor, have a chance to compete."[13] This suggestion is in line with one of the arguments advanced by the St. Joe Paper Company and it followed, at least in point of time, a similar suggestion made by Judge FRANK in his *dissenting* opinion in the *New Haven* case.[14] Judge FRANK's thesis, which purported to be based on the provision of Section 77 (b) relating to a sale "at not less than a fair upset price" was rejected by a majority of the Circuit Court of Appeals and the Supreme Court denied certiorari.[15]

A provision in a Florida East Coast plan of reorganization for a public sale would be utterly inconsistent with the purposes of Section 77 as declared by the Supreme Court. A "sale at not less than a fair upset price" has always been a mere mechanical device by which good title could be conveyed. Before the enactment of Section 77, and while doubts existed as to the power of the Commission and the Court to override objecting creditors, a provision for "a sale at not less than a fair upset price" was justified. The decisions in the *Denver, New Haven, Rock Island* and *Central of Georgia* make it clear that a good title can be conveyed in these proceedings whatever the vote may be. And the Coast Line's Reply demonstrates in detail at pages 41-71 and Appendix B thereto that any consideration of a public sale of the Florida East Coast would be anomalous.

• • • •

Some of the petitioners still challenge the Commission's power to approve a plan for a transfer of the Florida East Coast to the Atlantic Coast Line. Counsel for the St. Joe Paper Company say that the institution of the reorganization proceedings was the result of an agreement of certain creditors and they add:[16]

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[13] Sheet 92.

[14] *Old Colony Bondholders* v. *New York, New Haven & H. R. R. Co.* (C. C. A. 2, 1947) 161 F. (2d) 413, 431-452.

[15] *Protective Committee, etc.* v. *New York, New Haven & H. R. R. Co.* (1947) 67 S. Ct. 1754.

[16] Supplement of July 18, 1947, p. 16.

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"We can be sure that neither group of creditors nor any other creditor could have conceived of a possibility that by filing the petition, they were conferring upon the Commission power to transfer the assets of the Florida East Coast Railway to another corporation, so long as a reorganization could be effected."

Whatever anyone thought when the proceedings were instituted, e powers and duties of the Commission and the Court are statutory. ey are not affected by agreements, understandings or suggestions. ere is precisely the same statutory power to approve the unification the Florida East Coast and the Atlantic Coast Line as there was approve the unification of the Alton and the G. M. & O. That wer is derived from explicit statutory provisions, as is shown in e Coast Line's Reply at pages 31-41.

• • • •

The plan should be "fair and equitable" to the holders of the irst and Refunding Mortgage Bonds. The holders of a majority *amount* oppose the Commission's plan. A large majority *in numbers* those who have expressed themselves favor it.[17] These facts are gnificant if and to the extent—but only if and to the extent—that ey help the Commission to decide what is "fair and equitable."

The majority in amount who oppose the plan consist principally the St. Joe Paper Company (the du Pont Trust) and those whose osition is presumably dictated by Mr. Ball, the dominant du Pont rustee,[18] including Mr. Claughton and his associates.[19]

These facts are incontrovertible:

Mr. Ball is the dominant Trustee of the du Pont Trust.

The du Pont Trust is predominantly charitable, created for the enefit of a charitable Delaware corporation which is to care for crippled children, not incurable, and the care of old men and women, rst consideration to be given to residents of Delaware."[20]

The du Pont Trust and its subsidiary, the St. Joe Paper Company, old $25,100,000 of the Bonds, on which it could make a profit of at ast $14,600,000 and probably much more under the Commission's lan.[21]

Mr. Ball not only opposes the Commission's plan; he has announced his relentless determination to oppose any plan for the unifi-

[17] See Coast Line Reply of July 29, 1947, p. 1.
[18] See Coast Line Exceptions and Brief of August 20, 1946, Appendix B, p. 122-127.
[19] Transcript, p. 4755-4758.
[20] Report, Sheet 19.
[21] See Appendix A to this Summary.

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cation of the Florida East Coast and the Atlantic Coast Line, no matter how favorable financially to the du Pont Trust.

Mr. Ball's decision to oppose any unification plan cannot be attributed to his concern for the public interest, whatever he may say to the people of Florida. He is the Trustee of a Delaware charitable trust, created under a will which says nothing about Florida. Furthermore, the Commission, not Mr. Ball, determines what is in the public interest.

Nor can Mr. Ball's decision be due to a desire to reap financial benefits for the charitable trust. He opposes any unification plan, no matter how favorable to the beneficiaries of his trust. He opposes the Commission's plan, liberal as it is to the F. E. C. bondholders, at a time when the F. E. C. earnings are far less than either the Commission's forecast or his own—and he opposes it as vigorously as he opposed the less liberal Coast Line plan at a time of great F. E. C. prosperity.

Mr. Ball's opposition to the Commission's plan does not help the Commission to decide what is "fair and equitable." His reasons for opposing the plan are obviously not those of an ordinary bondholder, who seeks the best possible realization on his investment. On the other hand, a large majority in numbers of the ordinary bondholders have spoken, through their Committee, in favor of the plan.

• • • •

Mr. Ball's extraordinary position illuminates both aspects of this case—the treatment of the creditors and the public interest.

Assistant Director Boles' proposed report in the Young-New York Central proceeding[33] says that:[34]

> "As trustees of the Chesapeake & Ohio stockholders the applicants have shown a willingness to take great risks with the company's funds, speculating on their ability to get on the New York Central's board by persuading the Commission to overthrow all its precedents, and further speculating on their opinion that they can do a better job running the New York Central than can its present management."

and that:[34]

> "There is much in the record to indicate that purchase of the New York Central stock was made for the purpose of indulg-

[33] F. D. 14692; F. D. 11923, Sub. No.-2; F. D. 6281, Sub.-No. 6.
[34] Sheet 31.
[34] Sheet 31, Note 26.

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ing a hobby of applicant Young and for the further purpose of satisfying his personal ambition 'to be in the New York Central'; • • •"

Did not Mr. Ball speculate with charitable trust funds to buy the Florida East Coast Bonds? Having made a brilliantly successful speculation, is he not now speculating even more rashly when he refuses to take a profit of $14,600,000 or more?

"Hobby" would be too mild a characterization of Mr. Ball's wish to control the Florida East Coast and "ambition" is hardly adequate. He is obviously obsessed with a desire to control the road. Otherwise he would not be so completely insensitive to his duties as a Trustee of a charitable trust.

The quotations from Assistant Director Boles' proposed report are particularly appropriate, because Mr. Ball and Mr. Young have made common cause—first in an unsuccessful effort to obtain control of the Atlantic Coast Line [25] and then in sponsoring in this proceeding an absurd statistical comparison of the Florida East Coast and the Atlantic Coast Line.[26]

The only explanation of Mr. Ball's purpose which would have any relation to his duties as a Trustee would be that his control of the road would help other investments of the du Pont Trust,[27] the ramifications of which were set forth in Senator Pepper's brief and are summarized in the Report.[28] If a combination of the railroad with the other du Pont interests would create values not separately possessed by the units in the combination, such a combination might serve the interests of the du Pont Trust and Mr. Ball's effort to bring it about might be consistent with his responsibilities as a Trustee. But Mr. Ball cannot advance that explanation of his position, as it would involve an admission that he was attempting to bring about a combination which would not be "compatible with the public interest."

In any case, it would be too charitable to assume that Mr. Ball is actuated by any sense of duty to his trust. The record reveals that he has an inner drive for personal power which he seeks to achieve by the use of charitable trust funds and by propaganda circulated with a stark disregard for facts.[28a]

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[25] Transcript, p. 3635-3638, Ex. 239.
[26] Coast Line Brief of August 20, 1946, Appendix B, p. 162-165.
[27] Brief of August 20, 1946, p. 10-45.
[28] Sheets 19-23.
[28a] Coast Line Brief of August 20, 1946, Appendix B, p. 111-117.

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Under ordinary circumstances personalities are not material in a railroad reorganization case. But the power which Mr. Ball now wields and his urge to expand his powers are the only possible explanation of the failure of the Commission's plan to be welcomed by a great majority in amount of the Florida East Coast bondholders.

* * * *

The plan is clearly fair and equitable. Indeed, it is liberal. In such a case there is always a top limit and a bottom limit on what can reasonably be allotted. The Commission has provided for the Florida East Coast bondholders substantially more than the Coast Line offered. It did not exceed the top limit which the Coast Line can afford to pay in order to acquire the Florida East Coast, but it far exceeded the bottom limit which the bondholders could afford to accept rather than to have a separate reorganization.

That much was shown, as of July 29, 1947, in the Coast Line's Reply.[29] Schedule C attached to that Reply compared the effect on a Florida East Coast bondholder of the Commission's plan and the alternative "independent" plan, based on actual figures for the twelve months ended May 31, 1947. Submitted herewith in Appendix B is Schedule C2 covering the twelve months ended October 31, 1947, the last twelve months for which figures were available when this Summary of Argument was being prepared. No doubt the hurricane in September and October affected the Florida East Coast to a somewhat greater extent than it did the Atlantic Coast Line and it can be argued that Schedule C2 does not present a fair test of the two plans for that reason. However, the 1947 hurricane was not the first which has affected the Florida East Coast and the figures in Schedule C were not affected by a hurricane. The two schedules taken together are a convincing demonstration that even if the superior quality of the Coast Line's securities were disregarded, the greater value given the Florida East Coast bondholders under the Coast Line plan would still be strikingly more evident as the months go by. The concern which the Commission expressed in its Report of January 8, 1945[30] as to the future of the Florida East Coast as an independent carrier has been amply justified by the record of earnings since the Commission issued its Report of April 8, 1947.

The St. Joe Paper Company never indulged in optimistic proph-

[29] P. 71-99, 101-116.
[30] 261 I. C. C. 151, 162-163.

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ecies as to the future of an independent Florida East Coast. Its forecast of earnings was less than that of the Commission." But others have, and their prophecies have been belied not only by the present record but by the opinions expressed on behalf of the Florida East Coast management. Just as in the *Florida East Coast Divisions* case, (1939) 235 I. C. C. 211 the Florida East Coast applied for favorable divisions because of its inherent weakness, so in *Atlantic Coast Line Railroad Company Construction*, F. D. 15335, decided August 25, 1947, the Florida East Coast plead for help.

In the *Florida East Coast Divisions* case the Commission pointed out (235 I. C. C. 220) that

> "• • • the Florida East Coast handles but little overhead traffic of any kind—its services are principally those of an originating or terminating carrier. In 1935, of its total revenue tonnage, 98.4 percent originated or terminated on its line."

It is extremely vulnerable to competition (*id.*):

> "The Florida East Coast stresses the fact that although it was the pioneer carrier in Florida and did much to develop the eastern part of the State in the early years, it has since had to meet severe competition not only from other rail lines but from water carriers as well."

The Commission emphasized that the F. E. C. is particularly dependent upon perishable traffic and has "an unbalanced flow of traffic" (235 I. C. C. 222):

> "The shipping season for this perishable traffic extends from October to the following May or June, and during this period the height of the passenger business also occurs. This situation results in a skeletonized personnel during the summer, and a fully manned organization during the winter and spring. Not only is there this lack of balance during the year, but there is also an unbalanced flow of traffic, the southbound tonnage generally predominating when the north-bound traffic is at its ebb. These conditions, it is contended, add substantially to normal operating and handling costs. In fact, the nature of the traffic handled by the Florida East Coast is such that it results in an unusual haulage of empty equipment. Its south-bound tonnage consists mainly of lumber, crate material, fertilizer, building materials, meats and packing-house products, petroleum products in tank cars, and rock in gondola cars for road-

[21] 261 I. C. C. 151, 160.

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building purposes. There is little north-bound traffic that can be transported in this equipment, this north-bound traffic consisting mainly of fruits and vegetables for which it is necessary to bring in refrigerator cars and ventilated boxcars."

As a result of the plea made by the Florida East Coast more favorable divisions were granted to it at the expense of the three trunk line carriers. But the Receivers were not satisfied and in 1940 they filed a petition for a further hearing in which they said (p. 4, 14):

> "For the year 1939 the F. E. C. failed to meet its fixed charges by $2,091,031.84. This was not an unusual or exceptional year. It was typical.
>
> • • • •
>
> More vegetable traffic is being diverted from the F. E. C. to motor vehicles and water carriers during the current 1939-1940 season than it was in any previous season. In addition, Florida has experienced more frosts and freezing temperatures, and more continuous days of cold weather in January 1940 than in any previously recorded year. Continued freezing weather and frosts have caused untold damage to and destruction of Florida fruits and vegetables. The loss of this traffic will affect the F. E. C.'s freight-revenue very seriously, and far more seriously than that of any other Class-I railroad."

The *Atlantic Coast Line Railroad Company Construction* case, which was decided four months after the Commission's Report of April 8, 1947 in this proceeding, involved the construction by the Coast Line of a branch line which was opposed by the Florida East Coast on the ground that the construction would result in the diversion of some of the latter's vegetable traffic. On the oral argument on July 8, 1947 counsel for the Florida East Coast said:[22]

> "If the Coast Line comes in and takes away some of our revenue, then we are going to be in terrible shape. We are in bad shape now."

And Division 4 said in its Report dated August 25, 1947:

> "Among other things, it is shown that the East Coast is a bankrupt carrier struggling to survive. The decline of the East Coast from a once prosperous carrier to its present status is attributed to competition by other lines of railroad in Florida and by steamship lines reaching Miami and other coastal points served by that carrier."
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> • • • •

[22] Record, p. 626-627.

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Since the Commission's plan is "fair and equitable" and beyond peradventure of doubt far more favorable to the Florida East Coast bondholders *as a class* than any plan for an independent reorganization, approval of a plan for an independent reorganization would not meet the statutory standards in the absence of an explicit finding that it would not be "compatible with the public interest" for the Coast Line to control the Florida East Coast. If both a unification plan and a plan for an independent reorganization were compatible with the public interest, the Commission would be bound to approve that plan which most satisfactorily met the statutory requirement that the plan be "fair and equitable." It follows that the Commission should adhere to its approval of the unification plan unless on further consideration it finds that the unification plan would not be "compatible with the public interest" and that a plan for an independent reorganization, with control lodged in Mr. Ball, would be "compatible with the public interest." The Commission's Report of April 8, 1947 contains explicit findings to the contrary on both points and no Commissioner found that a unification plan would not be "compatible with the public interest."

Furthermore, the Report supports the view that six members of the Commission reached the conclusion that a plan for an independent reorganization, resulting in control by the du Pont Trust and Mr. Ball, would not be "compatible with the public interest."

Since such a conclusion precludes approval of such a plan and requires the adoption of a unification plan, if "fair and equitable," it might seem more logical for the present argument on behalf of the Coast Line to lay more emphasis on the public interest aspects of the case. The reason why that course has not been followed is that the public interest aspects of the case have received the greatest amount of attention in the evidence, on the argument and in most of the briefs. Indeed, despite the clear statement in the Commission's Report of its "dual responsibility," there may be some residual thought that the Coast Line is "a stranger seeking to acquire"[23] and that hence it must rest its whole case on the ground that it is incompatible with the public interest to have an independent reorganization, with resultant control by the du Pont Trust and Mr. Ball. But the fact is that the Commission's plan for a unification of the two roads is far more favorable to a Florida East Coast bondholder than any possible plan for an independent reorganization and that the Coast Line need not rest its whole

[23] Sheet 91.

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case on the ground that an independent reorganization would be "incompatible with the public interest."

However, the record establishes affirmatively that the public interest would be served by a unification of the two roads and that an independent reorganization, with resultant control by the du Pont Trust and Mr. Ball, would be seriously prejudicial to the public interest.

The affirmative showing of the advantages of a unification was discussed at considerable length in the Report.[34] Many of the statements in the Report were taken from Examiner Jewell's proposed report and, if anything, they underestimate the positive advantages of a unification. As pointed out in the Exceptions to Examiner Jewell's proposed report, the Examiner entertained serious doubts as to the Commission's power and those doubts may be presumed to have affected his views on all aspects of the case.

The grave public dangers of an independent reorganization, with resultant control by the du Pont Trust and Mr. Ball, were fully developed in Senator Pepper's Exceptions and Brief and in the Report.[35]

The outstanding facts are these:

The Atlantic Coast Line and the Florida East Coast are railroads and an end-to-end unification of two such railroads may be expected, in the light of past experience and the record, to prove beneficial to the public interest, particularly since one of the two is strong and the other is weak.

The du Pont Trust is predominantly a Delaware charitable trust, which was created under a will containing no suggestion that the funds of such a Delaware charitable trust were to be used to develop such a combination of interests in the State of Florida as Mr. Ball has developed and is seeking to expand. If an independent reorganization resulting in control by the du Pont Trust were approved, the fate of the Florida East Coast would then depend upon what the Trustees of the du Pont Trust would do. If the Trustees were faithful to their trust, the interests of the Trust would be paramount. The promises which Mr. Ball now makes may sound well, but they will all be found to be carefully hedged.[36]

The Report says:[36]

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[34] Sheets 23-51, 88-90.
[35] Transcript, p. 3457-3459, 3510-3511, 3536-3538.
[36] Sheet 21.

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"The Coast Line also seriously questions the right or propriety of the trustees under the duPont trust (which is a charitable trust) to invest its trust funds in this railroad property. While we do not feel called upon to construe the provisions of the will creating the trust, we should ordinarily scrutinize very carefully, from the standpoint of compatibility with the public interest, the qualifications of a charitable trust to manage and operate a large railroad property."

The Coast Line does question the right or propriety of the Trustees of the du Pont Trust to invest its trust funds in the Florida East Coast, but, since the investment has proved to be spectacularly successful, questions as to the original investment may be academic unless they be considered with other questions.

Much to the point is the inquiry as to why the Trustees of the du Pont Trust, under Mr. Ball's dominance, are unwilling to realize an enormous profit for the benefit of the Trust by permitting a unification of the two roads. Mr. Ball's announced position, which can be explained only by his craving for power, is that, no matter what the profits to the Trust might be, he would oppose any unification plan.

Also very much to the point is the question as to what would happen five or ten years from now if substantial additional capital investments in the Florida East Coast should be needed. Would the Trustees of the du Pont Trust, whoever they might then be, use funds from the Trust for the necessary capital expenditures?

Also important is the point made in the Report that the du Pont Trust is not to be presumed to be qualified to manage and operate a large railroad property. It was not created for that purpose, the Trustees were not selected with any such program in mind, and there is nothing in the record to indicate that control of the railroad could safely be lodged in the du Pont Trustees. In the event of Mr. Ball's death he would be succeeded by Dr. Frank Gaines, President for many years of Washington and Lee University at Lexington, Virginia, who has had no experience whatever in the operation of a railroad and would in all probability not care to have such a responsibility thrust upon him.

The Commission will make no error if it finds that the answers to the two issues in this case relating to the public interest and the fairness of the plan will be found in the story of the du Pont Trust and the Florida East Coast. That story would not be credible if it were not established of record.

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A recent article in the Saturday Evening Post[37] described the Girard Trust, which is said now to total $90,000,000 and was created by Stephen Girard to establish a school for "poor white orphans,"[38] now Girard College in Philadelphia, on the condition that "first priority for admission should go to applicants born in Philadelphia."[39] If the Trustees of the Girard Trust had stepped out and bought a majority of the bonds of the Central of Georgia during the reorganization of that railroad and had then resisted an advantageous proposal for a unification of the Central of Georgia with the Coast Line or the Seaboard because the principal Trustee of the Girard Trust wanted to run the railroad, that would have seemed so fantastic as to be incredible. Yet that is what has happened in the case of the du Pont Trust and the Florida East Coast. If it does not seem fantastic, it is only because the whole story was not brought out until the proceedings were reopened in 1945 and, in the meantime, the idea of control of the Florida East Coast by the du Pont Trust had become somewhat familiar.

The Commission has not felt "called upon to construe the provisions of the will creating the trust", but it has correctly stated the purposes of the Trust. There can be no question that, whatever the technical powers of the du Pont Trustees, Mr. Ball's insistence on control of the Florida East Coast constitutes an indefensible disregard of the purposes of the Trust. As has already been indicated, the character of the du Pont Trust and Mr. Ball's disregard of his obligations as a Trustee are the key to this whole case: they establish that the reorganization plan which he supports would not be "compatible with the public interest" and they explain why he resists a plan which would be "compatible with the public interest" and far more beneficial to the du Pont Trust than the plan which he supports.

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The petitions for modification of the order of April 8, 1947 should be denied.

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[37] December 13, 1947.
[38] P. 31.
[39] P. 54.

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FLORIDA EAST COAST RAILWAY COMPANY
REORGANIZATION

F. D. 13170

SUMMARY OF ARGUMENT IN BEHALF OF ATLANTIC COAST LINE RAILROAD COMPANY—JANUARY 7, 1948

APPENDIX A

THE PROFITS WHICH THE DU PONT TRUST AND THE ST. JOE PAPER COMPANY WOULD REALIZE UNDER THE COMMISSION'S PLAN

The St. Joe Paper Company holds $25,000,000 of Florida East Coast First and Refunding Mortgage Bonds and the du Pont Trust $100,000, a total of $25,100,000.[1] The St. Joe Paper Company vigorously resisted all efforts to have the record show the net cost of its Bonds, even going so far as to disregard a suggestion, amounting almost to a direction, made by Director Sweet on May 3, 1944, and a similar suggestion made by presiding Examiner Boyden on November 26, 1945,[2] that the cost be divulged. Consequently it is impossible to state exactly the present net cost of the Bonds.

However, the record contains abundant support for the statement that under the Commission's plan, based on market conditions as of December 19, 1947, the St. Joe Paper Company and the Trust would realize *minimum* net profits of at least $14,600,000, and that the profits would probably be far more.

The Cost of the Bonds: $3,500,000 of the Bonds were acquired ($3,400,000 by Florida National Building Corporation, which was later merged into the St. Joe Paper Company, and $100,000 by the Trust) in the period immediately preceding the hearing held on April 21, 1941 in order to give the du Pont Trust an important interest in the bond issue.[3] The highest price reached by the Bonds over the period from January 1, 1940 to April 21, 1941 was 11¼.[4] Even assuming that price was paid for the $3,500,000 of Bonds, their total cost was only $393,750.

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[1] Transcript, p. 3454.
[2] Coast Line Brief of August 20, 1946, Appendix B, p. 108-110.
[3] Transcript, p. 666-667.
[4] The Commercial & Financial Chronicle, Vol. 152, p. 2670.

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Apparently $10,000,000, and perhaps more, were purchased in or about the month of September 1942 from the Deposit Committee's depositors and from the New York Life Insurance Company at 16½, or a total cost of $1,650,000.[5]

$5,748,000 were purchased from undisclosed sources between April 21, 1941 and September 15, 1942, as on the latter date the Florida National Building Corporation filed a petition in the District Court stating that it was the owner of $19,148,000 of the Bonds.[6] The highest market price to September 15, 1942, was 15⅞.[7] However, it will be assumed for present purposes that the $5,748,000 of Bonds may have been purchased off the market at the same price as was being paid for the others, 16½, which would make the cost $948,420.

$4,091,000 were acquired by the St. Joe Paper Company between April 21, 1941 and September 29, 1942 and an additional $16,000 by Florida National Building Corporation by the latter date.[8] The highest market price to that date was 18½[9]; at that price the $4,107,000 would have cost $759,795.

$1,745,000 remain unaccounted for. Mr. Ball testified that only twenty of the Bonds cost as much as 70.[10] Even if 70 had been paid for all of the $1,745,000 of Bonds not accounted for, the cost would have been only $1,221,500.

The total of the foregoing cost figures, most of which are *maximum* rather than actual figures, is $4,973,465, or a *maximum* gross cost of $198.14 per $1,000 Bond.

Three interest coupons, or $75 a Bond, were paid between October 22, 1942 and June 10, 1943,[11] during which time the Florida National Building Corporation, the St. Joe Paper Company and the du Pont Trust had a total of *at least* $23,355,000 of Bonds, as shown above, and an additional $25 per Bond was paid in 1947, when the holdings totalled $25,100,000. The aggregate payments were thus *at least* $2,379,125, reducing the average cost of the $25,100,000 by *at least* $94.78 a Bond.

It follows that the record establishes that the present net cost of the $25,100,000 of Bonds is not more than $103.36 a Bond, as shown by the following table:

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[5] Transcript, p. 3511-3516, Ex. 252, 253.
[6] Court Record, Vol. 2, p. 299.
[7] The Commercial & Financial Chronicle, Vol. 156, p. 1030.
[8] Court Record, Vol. 2, p. 313.
[9] Bank and Quotation Record, Vol. 15, No. 10, p. 8.
[10] Transcript, p. 4157-4158.
[11] Court Record, Vol. 2, p. 317-318, 589-590, 739-740; Order of July 30, 1947, Document 596.

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Maximum Gross Cost

$ 3,500,000	@	11¼	$ 393,750
10,000,000	@	16½	1,650,000
5,748,000	@	16½	948,420
4,107,000	@	18½	759,795
1,745,000	@	70	1,221,500
$25,100,000	@	198.14	$4,973,465

Minimum Interest Payments

1942-1943 (minimum)			$1,751,625
1947			627,500
$25,100,000	@	94.78	$2,379,125

Maximum Net Cost

$25,100,000	@	103.36	$2,594,340

There can be no doubt that this table substantially overstates the actual present net cost of the Bonds. It will be observed that it assumes an average gross cost of $198.14 a Bond, whereas the record indicates that all except $1,745,000 of the entire $25,100,000 were bought for less than that, much the largest part being bought for substantially less. Throughout the calculations the highest possible prices have been assumed, especially in the case of the $1,745,000, which are assumed to have cost an average of 70, although they were bought over a period during most of which the price was much lower.

The present net cost of the Bonds will be further reduced by cash payments from the Estate in respect of (1) excess undistributed cash as of December 31, 1945, (2) earnings since December 31, 1945 and (3) any savings realized in connection with the tax settlement. The first item was estimated in the Report[13] at $1,289,190, but the $1,125,000 interest payment made in 1947 should be deducted from it. The second item is substantial and the present prospects are that the third item will be also. Indeed, there is every reason to suppose that the cash distributions from the Estate will exceed the actual present net cost of the $25,100,000 of Bonds, giving the du Pont Trust and its subsidiary the St. Joe Paper Company a minus net cost figure.

The Market Value of the Allotments under the Commission Plan: The following are suggested as *conservative* market valuations of the

[13] Sheet 66.

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allotments under the Commission's Plan, based on market conditions as of December 19, 1947:

	Allotment per $1,000 Bond	*Market Valuation*	*Net*
Cash	$ 91.67		$ 91.67
First Mortgage Bonds	300.00	90[13]	270.00
Income Bonds	175.00	70[14]	122.50
Preferred Stock	200.00	70[15]	140.00
Common Stock	133.33	48[16]	64.00
			$688.17

The Commission can judge for itself whether these prices are not conservative, based on market conditions on December 19, 1947, when this Appendix was prepared.

The Minimum Profit: Thus, (1) using *maximum* figures for cost, (2) allowing *nothing* for the cash payable from the Estate and (3) using *conservative* market valuations for the Coast Line securities allocated under the Plan, the *minimum* profit is found to be $584.81 per Bond or a total, for $25,100,000, of $14,678,727.

The *minimum* profit can thus be estimated as approximately 300% of the initial investment. The reasonable inference is that actually it would be 500% or more, as the actual cost figures were undoubtedly much less than the maximum cost figures given above.

Furthermore, there can be little doubt that the cash payable by the Coast Line under the Plan, plus that payable from the Estate, will substantially exceed the entire net cost of the Bonds and that all the securities allotted, having a face value of $20,289,083, will be clear profit.

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[13] A very high grade divisional mortgage bond, which would undoubtedly have sold at a premium a year ago.

[14] The total contingent interest would be only $334,687.50, following relatively small fixed charges.

[15] Cumulative and participating; small in amount and preceded by relatively small charges.

[16] Closing price on December 19, 1947 was 49¾.

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FLORIDA EAST COAST RAILWAY COMPANY
REORGANIZATION

F. D. 13170

SUMMARY OF ARGUMENT IN BEHALF OF ATLANTIC COAST LINE RAILROAD COMPANY—JANUARY 7, 1948

APPENDIX B

Attached hereto is Schedule C2, referred to at page 8 of the Summary of Argument. It is modeled on Schedule C, which will be found at pages 111-115 of the Coast Line's Reply of July 29, 1947. Schedule C is explained at pages 71-74 of that Reply.

The purpose of the two Schedules is to test, to the extent practicable and subject to the important qualifications hereinafter mentioned, the relative treatment of the Florida East Coast First and Refunding Mortgage Bonds under the Commission's plan and under a plan for an independent reorganization such as was approved in the Report of January 8, 1945.

Schedule C was based on the figures for the 12 months ended May 31, 1947, which were the most recent figures available when the Reply of July 29, 1947 was prepared. Schedule C2 is based on figures for the twelve months ended October 31, 1947, the most recent figures available when the Summary of Argument was prepared. There was a hurricane in Florida near the end of September and in early October, and no doubt the hurricane affected the earnings of the Florida East Coast to a somewhat greater extent than it did those of the Coast Line. However, that was not the first hurricane which Florida has suffered and Schedule C to the Coast Line's Reply, which was based on the twelve months ended May 31, 1947, covers a period in which there was no hurricane.

In Schedule C2 three adjustments have been made in the reported income accounts. *All three adjustments improve the showing of the alternative independent reorganization.* They are as follows:

A Coast Line passenger revenue credit of $800,000, applicable to prior years, has been eliminated.

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A credit to the Coast Line's operating expenses of $278,000, which was made in October 1947, has been eliminated.

Charges made by the Florida East Coast to operating expenses in each month commencing May 1, 1947, of approximately $140,000 a month, in connection with the retirement of the Okeechobee Branch have been eliminated.

As explained in the Coast Line's Reply of July 29, 1947 at pages 71-74, the Schedules are modeled on certain calculations made in Examiner Jewell's proposed report and in the Commission's Report (Sheets 54-55) and they test the effect of the two plans only by comparing the returns on the securities distributable under the Commission's plan with the returns on the securities which would be distributable under the alternative plan for an independent reorganization. Thus they do not take into account important benefits which the bondholders would have under the Commission's plan:

1. Under the plan approved by the Commission the Atlantic Coast Line would contribute $4,125,000 in cash. **The Schedules do not take into account the Coast Line's $4,125,000 cash contribution at all.**

2. The Schedules do not adequately reflect the superior attributes of the securities provided for in the Commission's plan. For example, under the Commission's plan an F. E. C. bondholder would receive $300 in 3½% First Mortgage Bonds, on which he would be paid $10.50 in interest in twelve months. The alternative independent plan would not provide for any First Mortgage Bonds and 4½% Income Bonds would be substituted therefor on which an F. E. C. bondholder would be entitled to receive $13.50, if the income was earned. In each 12-month period to which the Schedules relate interest on the Income Bonds would have been earned, so that the Schedules show an F. E. C. bondholder receiving less return on the $300 of First Mortgage Bonds than he would have received on the same amount of Income Bonds. Yet there is not the slightest question that the First Mortgage Bonds would be worth more than the Income Bonds. And there are, of course, other important respects in which the superior attributes of the securities allotted under the plan are not reflected—because they cannot be reflected—in schedules of that kind.

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SCHEDULE C2

Sheet No. 1

For Explanation See Reply of Atlantic Coast Line Railroad Company to Petitions for Modifications, dated July 29, 1947, pages 71-74.

	Twelve Months Ended Oct. 31, 1947	
	A.C.L. & F.E.C. Consolidated and Adjusted	F.E.C. Independently Reorganized
Railway Operating Revenues (See Note 1)	$154,803,021	$27,219,758
Railway Operating Expenses (See Note 2)	135,086,553	22,254,849
Net Railway from Railway Operations ..	$ 19,716,468	$ 4,964,909
Equipment and Joint Facility Rents— Net Debit ..... (Reported)	3,643,227	1,262,105
Railway Tax Accruals:		
Other than Federal Income .. (Reported)	10,803,267	1,915,882
Federal Income (Estimated—See Note 3)	1,430,905	363,034
Net Railway Operating Income	$ 3,839,069	$ 1,423,888
Other Income ..... (Reported)	6,795,764	167,847
Miscellaneous Deductions from Income .... (Reported)	155,862	31,460
Income Available for Fixed Charges	$ 10,478,971	$ 1,560,275
Fixed and Contingent Charges: (See Note 4)		
ACL (Reported, plus $807,188 for proposed additional securities)	4,949,400	
FEC (Estimated)		967,956
Income after Fixed and Contingent Charges	$ 5,529,571	$ 592,319
Less: Dividends on 1,596 shares (1/1/47) Old Preferred Stock	7,980	
Income Available for New Preferred and Common Stock	$ 5,521,591	
Average per Share of Stock:		
973,427 shares	$ 5.67	
202,500 shares		$ 2.93

SCHEDULE C2

Notes:

(1) Railway operating revenues (consolidated only) decreased $800,000 to eliminate effect of ACL change in accounting practice, as a result of which passenger revenue earned on tickets sold by foreign roads has been entered currently on an estimated basis, effective with July, 1947, accounts, instead of being entered in the month following the one in which earned. This change in practice caused the total passenger revenue figure (ACL) to include earnings on foreign road sales for 11 months, instead of 10 months, and the adjustment eliminates the extra month.

(2) Railway Operating Expenses in both cases represent amounts reported less debit of $854,556 reported by F.E.C. May through October, 1947, account retirement of Okeechobee Branch. In the consolidated set up there has been eliminated a credit of $278,000 reported in October, 1947, by the A.C.L. as deferred maintenance.

(3) Federal Income taxes for consolidated set up approximated at 38% of income after fixed and contingent charges before deduction of Federal Income taxes, but excluding 85% of A.C.L. dividend income of $3,758,745, or $3,194,936, as non-taxable. For F.E.C. independent reorganization, the computation is made at 38% of income after charges before deduction for Federal income taxes.

(4) Fixed and contingent charges for the consolidated set up include reported A.C.L. charges, including equipments, plus charges of $807,188 applicable to additional securities it is proposed to issue, and estimate of $56,706 for F.E.C. equipments to be assumed. For F.E.C. independent reorganization, they are the contingent charges specified in the Commission's Report of January 8, 1945, plus estimate of $56,706 for equipments based on securities outstanding January 1, 1947. In both cases sinking fund requirements are disregarded.

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SCHEDULE C2

Sheet No. 2

For Explanation See Reply of Atlantic Coast Line Railroad Company to Petitions for Modifications, dated July 29, 1947, pages 71-74.

Independent Reorganization—	
On $450 principal amount 4½% Income Bonds	$20.25
Available for 4½ shares of Common Stock at $2.93 per share	13.19
Total	$33.44
Unification Reorganization—	
On $300 principal amount 3½% First Mortgage Bonds	$10.50
On $175 principal amount 4¼% Income Mortgage Bonds	7.44
Available for 2 shares 4% Preferred Stock (2 x $5.67)..	11.34
Available for 1-1/3 shares Common Stock (1-1/3 x $5.67)	7.56
Total	$36.84
Percentage of difference =	10.17%

SCHEDULE C2

Sheet N

FOR EXPLANATION SEE REPLY OF ATLANTIC COAST LINE RAILR COMPANY TO PETITIONS FOR MODIFICATIONS, DATED JULY 29, 19 PAGES 71-74.

Independent Reorganization—		
Income available for dividends, per sheet 1 ...	$ 592,319	
(Equivalent to $2.93 per share on 202,500 shares)		
Available earnings per $1,000 F. E. C. First and Refunding Bond:		
On $450 principal amount 4½% Income Bonds		$20.25
Available for 4½ shares of Common Stock		13.19
Total		$33.44
Unification Reorganization—		
Income available for dividends, per sheet 1 ...	$5,521,591	
Add: Net estimated savings to result from merger, after deduction of Federal income taxes	418,500	
Total income available for dividends	$5,940,091	
(Equivalent to $6.10 per share, collectively on proposed new preferred, and on existing and proposed common, aggregating 973,427 shares)		
Available earnings per $1,000 F. E. C. First and Refunding Bond:		
On $300 principal amount 3½% First Mortgage Bonds ...		$10.50
On $175 principal amount 4¼% Income Mortgage Bonds .		7.44
Available for 2 shares 4% Preferred Stock (2 x $6.10) ...		12.20
Available for 1-1/3 shares Common Stock (1-1/3 x $6.10).		8.13
Total		$38.27
Percentage of Difference =		14.44%

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SCHEDULE C2

Sheet No. 4

For Explanation See Reply of Atlantic Coast Line Railroad Company to Petitions for Modifications, dated July 29, 1947, pages 71-74.

Independent Reorganization—		
Income available for dividends, per sheet 1 ..	$ 592,319	
If only 70.52% of income available is paid out, conforming to a $4.00 dividend on new Preferred and Common, as developed below, the payment would be	417,703	
(Equivalent to $2.06 per share on 202,500 shares)		
Balance-Income not distributed	$ 174,616	
On $450 principal amount 4½% Income Bonds		$20.25
On 4½ shares of Common Stock at $2.06 per share		9.27
Total		$29.52
Unification Reorganization—		
Income available for dividends, per sheet 1 ..	$5,521,591	
$4.00 per share on new Preferred and Common (973,427 shares)	3,893,708	
(Ratio of Dividends to income available—70.52%).		
Balance-Income not distributed	$1,627,883	
On $300 principal amount 3½% First Mortgage Bonds		$10.50
On $175 principal amount 4¼% Income Mortgage Bonds		7.44
On 2 shares of 4% Preferred Stock		8.00
On 1⅓ shares of Common Stock		5.33
Total		$31.27

Percentage of Difference = 5.93%

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SCHEDULE C2

Sheet N

FOR EXPLANATION SEE REPLY OF ATLANTIC COAST LINE RAIL COMPANY TO PETITIONS FOR MODIFICATIONS, DATED JULY 29, 1 PAGES 71-74.

Independent Reorganization—		
Income available for dividends, per sheet 1 ..	$ 592,319	
If only 65.55% of income available is paid out, conforming to a $4.00 dividend on new Preferred and Common, as developed below, the payment would be	388,265	
(Equivalent to $1.92 per share on 202,500 shares)		
Balance	$ 204,054	
On $450 principal amount 4½% Income Bonds		$20.2
On 4½ shares of Common Stock at $1.92 per share ...		8.6
Total		$28.8
Unification Reorganization—		
Income Available for dividends, per sheet 1 ..	$5,521,591	
Add: Net estimated savings to result from merger, after deduction of Federal income taxes	418,500	
Total income available for dividends	$5,940,091	
$4.00 per share on new Preferred and Common (973,427 shares)	3,893,708	
(Ratio of dividends to income available—65.55%)		
Balance-Income not distributed	$2,046,383	
On $300 principal amount 3½% First Mortgage Bonds		$10.5
On $175 principal amount 4¼% Income Mortgage Bonds		7.4
On 2 shares of 4% Preferred Stock		8.0
On 1⅓ shares of Common Stock		5.3
Total		$31.2
Percentage of Difference =		8.2

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EXHIBIT 19
F.E.C. Ry. Co.
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Sheet No. 1

EARNINGS PER SHARE OF STOCK UNDER PROPOSED UNIFICATION OF ATLANTIC COAST LINE AND FLORIDA EAST COAST COMPARED WITH SIMILAR EARNINGS ASSUMING AN INTERNAL REORGANIZATION OF FLORIDA EAST COAST

TWELVE MONTHS ENDED OCTOBER 31, 1947

	A.C.L. & F.E.C. Consolidated and Adjusted	F.E.C. Independently Reorganized
Railway Operating Revenues (See Note 1)	$154,803,021	$27,219,758
Railway Operating Expenses (See Note 2)	135,086,553	22,254,849
Net Revenue from Railway Operations	$ 19,716,468	$ 4,964,909
Equipment and Joint Facility Rents—Net Debit (Reported)	3,643,227	1,262,105
Railway Tax Accruals:		
Other than Federal Income (Reported)	10,803,267	1,915,882
Federal Income (Estimated—See Note 3)	1,430,905	363,034
Net Railway Operating Income	$ 3,839,069	$ 1,423,888
Other Income (Reported)	6,795,764	167,847
Miscellaneous Deductions from Income (Reported)	155,862	31,460
Income Available for Fixed Charges	$ 10,478,971	$ 1,560,275
Fixed and Contingent Charges: (See Note 4)		
ACL and FEC	4,949,400	
FEC		967,956
Income after Fixed and Contingent Charges	$ 5,529,571	$ 592,319
Less: Dividends on 1,596 shares (1/1/47) Old Preferred Stock	7,980	
Income Available for New Preferred and Common Stock	$ 5,521,591	
Average per Share of Stock:		
973,427 shares	$ 5.67	
202,500 shares		$ 2.93

See Notes on reverse of this sheet.

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Notes:

(1) Railway operating revenues (consolidated only) decreased $800,000 t
effect of ACL change in accounting practice, as a result of which passenger reve
on tickets sold by foreign roads has been entered currently on an estimated bas
with July, 1947, accounts, instead of being entered in the month following the on
earned. This change in practice caused the total passenger revenue figure (ACL)
earnings on foreign road sales for 13 months, instead of 12 months, and the
eliminates the extra month.

(2) Railway Operating Expenses in both cases represent amounts reported
of $854,556 reported by F.E.C. May through October, 1947, account retirement of C
Branch. In the consolidated set up there has been eliminated a credit of $278,00
in October, 1947, by the A.C.L. as deferred maintenance.

(3) Federal Income taxes for consolidated set up approximated at 38% of inc
fixed and contingent charges before deduction of Federal Income taxes, but exclu
of A.C.L. dividend income of $3,758,845, or $3,194,936, as non-taxable. For F.E.C
reorganization, the computation is made at 38% of income after charges before ded
Federal income taxes.

(4) Fixed and contingent charges for the consolidated set up include report
charges, including equipments, plus charges of $807,188 applicable to additional
it is proposed to issue, and estimate of $56,706 for F.E.C. equipments to be assum
F.E.C. internal reorganization, they are the contingent charges specified in the
sion's Report of January 8, 1945, plus estimate of $56,706 for equipments based on
outstanding January 1, 1947. In both cases sinking fund requirements are disrega

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COMPARISON OF EARNINGS AVAILABLE FOR SECURITIES TO BE EXCHANGED FOR EACH $1,000 F. E. C. FIRST AND REFUNDING MORTGAGE BOND — PROPOSED INTERNAL REORGANIZATION VS. PROPOSED UNIFICATION WITH A. C. L.

TWELVE MONTHS ENDED OCTOBER 31, 1947

BASED ON FIGURES SHOWN ON SHEET 1, AND ASSUMING ALL AVAILABLE INCOME IS DISTRIBUTED

Internal Reorganization—		
On $450 principal amount 4½% Income Bonds	$20.25	
Available for 4½ shares of Common Stock at $2.93 per share	13.19	
Total		$33.44
Unification Reorganization—		
On $300 principal amount 3½% First Mortgage Bonds	$10.50	
On $175 principal amount 4¼% Income Mortgage Bonds	7.44	
Available for 2 shares 4% Preferred Stock (2 x $5.67)	11.34	
Available for 1-1/3 shares Common Stock (1-1/3 x $5.67)	7.56	
Total		$36.84

Percentage of difference = 10.17%

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COMPARISON OF EARNINGS AVAILABLE FOR SECURITIES TO BE EXCHANGED FOR EACH $1,000 F. E. C. FIRST AND REFUNDING MORTGAGE BOND — PROPOSED INTERNAL REORGANIZATION VS. PROPOSED UNIFICATION WITH A. C. L.

TWELVE MONTHS ENDED OCTOBER 31, 1947

BASED ON FIGURES SHOWN ON SHEET 1, BUT CONSIDERING ALSO SAVINGS EXPECTED TO RESULT FROM UNIFICATION, AND ASSUMING ALL AVAILABLE INCOME IS DISTRIBUTED

Internal Reorganization—

Income available for dividends, per sheet 1 ...	$ 592,319	
(Equivalent to $2.93 per share on 202,500 shares)		
Available earnings per $1,000 F. E. C. First and Refunding Bond:		
On $450 principal amount 4½% Income Bonds	$20.25	
Available for 4½ shares of Common Stock	13.19	
Total		$33.44

Unification Reorganization—

Income available for dividends, per sheet 1 ...	$5,521,591	
Add: Net estimated savings to result from merger, after deduction of Federal income taxes	418,500	
Total income available for dividends	$5,940,091	
(Equivalent to $6.10 per share, collectively on proposed new preferred, and on existing and proposed common, aggregating 973,427 shares)		
Available earnings per $1,000 F. E. C. First and Refunding Bond:		
On $300 principal amount 3½% First Mortgage Bonds ...	$10.50	
On $175 principal amount 4¼% Income Mortgage Bonds .	7.44	
Available for 2 shares 4% Preferred Stock (2 x $6.10) ...	12.20	
Available for 1-1/3 shares Common Stock (1-1/3 x $6.10).	8.13	
Total		$38.27

Percentage of Difference — 14.44%

COMPARISON OF EARNINGS AVAILABLE FOR SECURITIES TO BE EXCHANGED FOR EACH $1,000 F. E. C. FIRST AND REFUNDING MORTGAGE BOND — PROPOSED INTERNAL REORGANIZATION VS. PROPOSED UNIFICATION WITH A. C. L.

TWELVE MONTHS ENDED OCTOBER 31, 1947

BASED ON FIGURES SHOWN ON SHEET 1, BUT ASSUMING THAT DIVIDENDS UNDER THE PROPOSED INTERNAL REORGANIZATION WOULD CONSTITUTE THE SAME PERCENTAGE OF INCOME AVAILABLE AS A $4.00 DIVIDEND ON PREFERRED AND COMMON UNDER THE PROPOSED UNIFICATION

Internal Reorganization—

Income available for dividends, per sheet 1 ..	$ 592,319	
If only 70.52% of income available is paid out, conforming to a $4.00 dividend on new Preferred and Common, as developed below, the payment would be	417,703	
(Equivalent to $2.06 per share on 202,500 shares)		
Balance-Income not distributed	$ 174,616	
On $450 principal amount 4½% Income Bonds		$20.25
On 4½ shares of Common Stock at $2.06 per share		9.27
Total		$29.52

Unification Reorganization—

Income available for dividends, per sheet 1 ..	$5,521,591	
$4.00 per share on new Preferred and Common (973,427 shares)	3,893,708	
(Ratio of Dividends to income available—70.52%).		
Balance-Income not distributed	$1,627,883	
On $300 principal amount 3½% First Mortgage Bonds		$10.50
On $175 principal amount 4¼% Income Mortgage Bonds		7.44
On 2 shares of 4% Preferred Stock		8.00
On 1⅓ shares of Common Stock		5.33
Total		$31.27

Percentage of Difference = 5.93%

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COMPARISON OF EARNINGS AVAILABLE FOR SECURITIES TO BE EXCHANGED FOR EACH $1,000 F. E. C. FIRST AND REFUNDING MORTGAGE BOND — PROPOSED INTERNAL REORGANIZATION VS. PROPOSED UNIFICATION WITH A. C. L.

TWELVE MONTHS ENDED OCTOBER 31, 1947

BASED ON FIGURES SHOWN ON SHEET 1, BUT CONSIDERING ALSO SAVINGS EXPECTED TO RESULT FROM UNIFICATION, AND ASSUMING THAT DIVIDENDS UNDER THE PROPOSED INTERNAL REORGANIZATION WOULD CONSTITUTE THE SAME PERCENTAGE OF INCOME AVAILABLE AS A $4.00 DIVIDEND ON PREFERRED AND COMMON UNDER THE PROPOSED UNIFICATION

Internal Reorganization—

Income available for dividends, per sheet 1 ..	$ 592,319		
If only 65.55% of income available is paid out, conforming to a $4.00 dividend on new Preferred and Common, as developed below, he payment would be	388,265		
(Equivalent to $1.92 per share on 202,500 shares)			
Balance—Income not distributed	$ 204,054		
On $450 principal amount 4½% Income Bonds		$20.25	
On 4½ shares of Common Stock at $1.92 per share ...		8.64	
Total			$28.89

Unification Reorganization—

Income Available for dividends, per sheet 1 ..	$5,521,591		
Add: Net estimated savings to result from merger, after deduction of Federal income taxes	418,500		
Total income available for dividends	$5,940,091		
$4.00 per share on new Preferred and Common (973,427 shares)	3,893,708		
(Ratio of dividends to income available—65.55%)			
Balance-Income not distributed	$2,046,383		
On $300 principal amount 3½% First Mortgage Bonds		$10.50	
On $175 principal amount 4¼% Income Mortgage Bonds		7.44	
On 2 shares of 4% Preferred Stock		8.00	
On 1⅓ shares of Common Stock		5.33	
Total			$31.27

Percentage of Difference = 8.24%

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A.C.L. Ex. No. 20

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Sheet No. 1

EXHIBIT 20
F.E.C. Ry. Co.
VS
A.C.L.

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EARNINGS PER SHARE OF STOCK UNDER PROPOSED UNIFICATION OF ATLANTIC COAST LINE AND FLORIDA EAST COAST COMPARED WITH SIMILAR EARNINGS ASSUMING AN INTERNAL REORGANIZATION OF FLORIDA EAST COAST

TWELVE MONTHS ENDED OCTOBER 31, 1948

	A.C.L. & F.E.C. Consolidated and Adjusted	F.E.C. Independently Reorganized
Railway Operating Revenues	$165,112,370	$28,583,186
Railway Operating Expenses (See Note 1)	141,280,445	24,165,175
Net Revenue from Railway Operations	$ 23,831,925	$ 4,418,011
Equipment and Joint Facility Rents — Net Debit — (Reported)	3,992,978	1,230,576
Railway Tax Accruals:		
Other than Federal Income	10,526,091	1,726,091
Federal Income (Estimated—See Note 2)	3,286,237	246,367
Net Railway Operating Income	$ 6,026,619	$ 1,214,977
Other Income (Reported)	7,044,360	185,530
Miscellaneous Deductions from Income (Reported)	167,774	20,674
Income Available for Fixed Charges	$ 12,903,205	$ 1,379,833
Fixed and Contingent Charges (See Note 3)		
ACL and FEC	4,817,118	
FEC		977,866
Income after Fixed and Contingent Charges	$ 8,086,087	$ 401,967
Less: Dividends on 1,554 shares 10-31-48) Old Preferred Stock	7,770	
Income available for new Preferred and Common Stock	$ 8,078,317	
Average per Share of Stock:		
973,427 shares	$ 8.30	
202,500 shares		$ 1.99

See Notes on reverse of this sheet.

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Notes:

(1) Railway operating expenses in both cases represent amounts reported less debit of $113,057 reported by F. E. C. November, 1947, through October, 1948, account retirement of Okeechobee Branch. In the consolidated set-up there has been eliminated a credit of $817,275 reported through October, 1948, by the A. C. L. as deferred maintenance applicable to the year covered.

(2) Federal Income taxes for consolidated set-up approximated at 38% of income after fixed and contingent charges before deduction of Federal Income taxes, but excluding 85% of A. C. L. dividend income of $3,205,096, or $2,724,332, as non-taxable. For F. E. C. internal reorganization, the computation is made at 38% of income after charges before deduction for Federal Income Taxes.

(3) Fixed and contingent charges for the consolidated set-up include reported A. C. L. charges, including equipments, plus charges of $807,188 applicable to additional securities it is proposed to issue, and estimate of $66,616 for F. E. C. equipments to be assumed. For F. E. C. internal reorganization, they are the contingent charges specified in Commission's Report of January 8, 1945, plus estimate of $66,616 for equipments based on securities outstanding January 1, 1948. In both cases sinking fund requirements are disregarded.

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COMPARISON OF EARNINGS AVAILABLE FOR SECURITIES TO BE EXCHANGED FOR EACH $1,000 F. E. C. FIRST AND REFUNDING MORTGAGE BOND — PROPOSED INTERNAL REORGANIZATION VS. PROPOSED UNIFICATION WITH A. C. L.

TWELVE MONTHS ENDED OCTOBER 31, 1948

BASED ON FIGURES SHOWN ON SHEET 1, AND ASSUMING ALL AVAILABLE INCOME IS DISTRIBUTED

Internal Reorganization—		
On $450 principal amount 4½% Income Bonds	$20.25	
Available for 4½ shares of Common Stock at $1.99 per share	8.96	
Total		$29.21
Unification Reorganization—		
On $300 principal amount 3½% First Mortgage Bonds	$10.50	
On $175 principal amount 4¼% Income Mortgage Bonds	7.44	
Available for 2 shares 4% Preferred Stock (2 x $8.30)	16.60	
Available for 1⅓ shares Common Stock (1⅓ x $8.30)	11.06	
Total		$45.60

Percentage of Difference — 56.11%

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COMPARISON OF EARNINGS AVAILABLE FOR SECURITIES TO BE EXCHANGED FOR EACH $1,000 F. E. C. FIRST AND REFUNDING MORTGAGE BOND — PROPOSED INTERNAL REORGANIZATION VS. PROPOSED UNIFICATION WITH A. C. L.

TWELVE MONTHS ENDED OCTOBER 31, 1948

BASED ON FIGURES SHOWN ON SHEET 1, BUT CONSIDERING ALSO SAVINGS EXPECTED TO RESULT FROM UNIFICATION, AND ASSUMING ALL AVAILABLE INCOME IF DISTRIBUTED

Internal Reorganization—		
On $450 principal amount 4½% Income Bonds		$20.25
Available for 4½ shares of Common Stock		8.96
Total		**$29.21**
Unification Reorganization—		
Income available for dividends, per sheet 1	$8,078,317	
Add: Net estimated savings to result from merger, after deduction of Federal income taxes	418,500	
Total income available for dividends (Equivalent to $8.73 per share, collectively on proposed new preferred, and on existing and proposed common, aggregating 973,427 shares)	$8,496,817	
Available earnings per $1,000 F. E. C. First and Refunding Bond:		
On $300 principal amount 3½% First Mortgage Bonds		$10.50
On $175 principal amount 4¼% Income Mortgage Bonds		7.44
Available for 2 shares 4% Preferred Stock (2 x $8.73)		17.46
Available for 1¼ shares Common Stock (1¼ x $8.73)		11.64
Total		**$47.04**

Percentage of difference — 61.04%

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COMPARISON OF EARNINGS AVAILABLE FOR SECURITIES TO BE EXCHANGED FOR EACH $1,000 F. E. C. FIRST AND REFUNDING MORTGAGE BOND — PROPOSED INTERNAL REORGANIZATION VS. PROPOSED UNIFICATION WITH A. C. L.

TWELVE MONTHS ENDED OCTOBER 31, 1948

BASED ON FIGURES SHOWN ON SHEET 1, BUT ASSUMING THAT DIVIDENDS UNDER THE PROPOSED INTERNAL REORGANIZATION WOULD CONSTITUTE THE SAME PERCENTAGE OF INCOME AVAILABLE AS A $4.00 DIVIDEND ON PREFERRED AND COMMON UNDER THE PROPOSED UNIFICATION

Internal Reorganization—

Income available for dividends, per sheet 1 ..	$ 401,967		
If only 48.20% of income available is paid out, conforming to a $4.00 dividend on new Preferred and Common, as developed below, the payment would be	193,748		
(Equivalent to $.96 per share on 202,500 shares)			
Balance—Income not distributed...	$ 208,219		
On $450 principal amount 4½% Income Bonds		$20.25	
On 4½ shares of Common Stock at $.96 per share		4.32	
Total			$24.57

Unification Reorganization—

Income available for dividends, per sheet 1 ..	$8,078,317		
$4.00 per share on new Preferred and Common (973,427 shares)	3,893,708		
(Ratio of Dividends to income available—48.20%)			
Balance—Income not distributed ..	$4,184,609		
On $300 principal amount 3½% First Mortgage Bonds..		$10.50	
On $175 principal amount 4¼% Income Mortgage Bonds		7.44	
On 2 shares of 4% Preferred Stock		8.00	
On 1⅓ shares of Common Stock		5.33	
Total			$31.27

Percentage of Difference — 27.27%

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COMPARISON OF EARNINGS AVAILABLE FOR SECURITIES TO BE EXCHANGED FOR EACH $1,000 F. E. C. FIRST AND REFUNDING MORTGAGE BOND — PROPOSED INTERNAL REORGANIZATION VS. PROPOSED UNIFICATION WITH A. C. L.

TWELVE MONTHS ENDED OCTOBER 31, 1948

BASED ON FIGURES SHOWN ON SHEET 1, BUT CONSIDERING ALSO SAVINGS EXPECTED TO RESULT FROM UNIFICATION, AND ASSUMING THAT DIVIDENDS UNDER THE PROPOSED INTERNAL REORGANIZATION WOULD CONSTITUTE THE SAME PERCENTAGE OF INCOME AVAILABLE AS A $4.00 DIVIDEND ON PREFERRED AND COMMON UNDER THE PROPOSED UNIFICATION

Internal Reorganization—			
Income available for dividends, per sheet 1 ..	$ 401,967		
If only 45.83% of income available is paid out, conforming to a $4.00 dividend on new Preferred and Common, as developed below, the payment would be	184,221		
(Equivalent to $.91 per share on 202,500 shares)			
Balance—Income not distributed ...	$ 217,746		
On $450 principal amount 4½% Income Bonds		$20.25	
On 4½ shares of Common Stock at $.91 per share		4.10	
Total			$24.35
Unification Reorganization—			
Income available for dividends, per sheet 1 ..	$8,078,317		
Add: Net estimated savings to result from merger, after deduction of Federal income taxes	418,500		
Total income available for dividends	$8,496,817		
$4.00 per share on new Preferred and Common (973,427 shares)	3,893,708		
(Ratio of dividends to income available 45.83%)			
Balance—Income not distributed...	$4,603,109		
On $300 principal amount 3½% First Mortgage Bonds..		$10.50	
On $175 principal amount 4¼% Income Mortgage Bonds		7.44	
On 2 shares of 4% Preferred Stock		8.00	
On 1⅓ shares of Common Stock		5.33	
Total			$31.27

Percentage of difference — 28.42%

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A. C. L. Exhibit 2

COMPARISON OF MAINTENANCE EXPENDITURES IN RELATION TO TOTAL REVENUES AND TOTAL OPERATING EXPENSES, ATLANTIC COAST LINE VS. FLORIDA EAST COAST

TWELVE MONTHS ENDED OCTOBER 31, 1947

4527 Exhibit 21
I.C.C. Docket No. 6
FILED IN EVIDENCE
JAN 12 1948
EDWIN M. WILLIAMS, Clerk

	Atlantic Coast Line	Florida East Coast
Total Operating Revenues (See Note)	$127,583,263	$27,219,758
Total Operating Expenses (See Note)	108,506,590	21,063,381
Total M. of W. & S. Expenses (See Note)	25,865,278	4,059,134
Percentage of revenues	20.27	14.91
Percentage of expenses	23.84	19.27
Total M. of E. Expenses (See Note)	19,456,593	3,996,277
Percentage of revenues	15.25	14.68
Percentage of expenses	17.93	18.97
Total Maintenance (See Note)	45,321,871	8,055,411
Percentage of revenues	35.52	29.59
Percentage of expenses	41.77	38.24

NOTE: Atlantic Coast Line total operating revenues have been decreased $800,000 to eliminate effect of change in passenger accounting practice, effective with July, 1947, accounts, whereby revenue earned on tickets sold by foreign roads was entered currently on an estimated basis instead of being entered in the month following the one in which earned.

For both companies total operating expenses, total maintenance of way and structures expenses and total maintenance of equipment expenses exclude depreciation and amortization charges. In addition, Atlantic Coast Line total operating expenses and total M. of W. & S. expenses exclude a credit of $278,000 to Account 268, "Deferred Maintenance — Way and Structures," while Florida East Coast total operating expenses and total M. of W. & S. expenses exclude a debit of $854,556 incident to retirement of Okeechobee Branch.

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A. C. L. Ex no 22

4827 A.C.L.

EXHIBIT 22
F.E.C. Ry Co
vs

FILED IN EVIDENCE
JAN 1 2 1949

Comparison of Maintenance Expenditures in Relation to Total Revenues and Total Operating Expenses, Atlantic Coast Line vs. Florida East Coast

Twelve Months Ended October 31, 1948

	Atlantic Coast Line	Florida East Coast
Total Operating Revenue	$136,529,184	$28,583,186
Total Operating Expenses (See Note)	112,800,690	22,878,238
Total M. of W. & S. Expenses (See Note)	24,772,607	4,174,514
Percentage of revenues	18.15	14.60
Percentage of expenses	21.96	18.25
Total M. of E. Expenses (See Note)	20,211,950	4,295,046
Percentage of revenues	14.80	15.03
Percentage of expenses	17.92	18.77
Total Maintenance (See Note)	44,984,557	8,469,560
Percentage of revenues	32.95	29.63
Percentage of expenses	39.88	37.02

Note: For both companies total operating expenses, total maintenance of way and structures expenses and total maintenance of equipment expenses exclude depreciation and amortization charges. In addition, Atlantic Coast Line total operating expenses and total M. of W. & S. expenses exclude a credit of $817,275 to Account 265, "Deferred Maintenance—Way and Structures", while Florida East Coast total operating expenses and total M. of W. & S. expenses exclude a debit of $113,057 incident to retirement of Okeechobee Branch.

5% Committee EXHIBIT no. 1

4827 Docket 2

EXHIBIT
F.E.C. Ry. Co.
vs
FILED IN EVIDENCE
JAN 11 1949 193
EDWIN R. WILLIAMS, Clerk

I.C.C. ESTIMATE OF MARKET PRICES AND VALUES OF CASH AND SECURITIES OFFERED EACH $1,000 F.E.C. FIRST AND REFUNDING BOND

	Allotment Par or Stated Value	Estimated Market Price	Total Estimated Market Value
Cash	$ 91.67	100	$ 91.67
A.C.L. First Mortgage	300.00	90	270.00
A.C.L. Income	175.00	70	122.50
A.C.L. Preferred	200.00	70	140.00
A.C.L. Common	133.33	46 3/4	62.33
Total	$900.00		$686.50

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5% Committee EXHIBIT 2

4827 Pub.

EXHIBIT 2
P. U. C. Pa.
vs
FILED IN EVIDENCE
JAN 1 1 1949 193
Edwin R. Williams, Clerk

C.

Coverage and Earnings for the Securities that would be issued by the P.U.C. under the various estimated levels of normal earnings

Income before charges & Income Tax	$1,800,000	$1,800,000	$1,947,000	$2,365,000
Approximate charges	1,000,000	1,000,000	1,000,000	1,000,000
Balance	800,000	800,000	947,000	1,365,000
Income Tax (38%)	280,000	300,000	359,000	518,000
Income Avail.for Charges (After Income Tax)	$1,380,000	$1,800,000	$1,888,000	$1,845,000
Approximate charges	1,000,000	1,000,000	1,000,000	1,000,000
Times earned	1.38	1.80	1.89	1.85
Net Income	380,000	800,000	888,000	845,000
Earned per share	$1.87	$3.47	$3.90	$4.20

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5 % Committee EXHIBIT No. 3

Pro Forma Coverage
Through Subject Issue
After a 38% Income Tax

	1938-47	1941	1947	1948Z	Price 1/3/49
Florida East Coast - Proposed	3.4	1.4	1.2*	1.7	?
Atlantic Coast Line - Proposed	4.2	3.3	2.2	2.7	?
Chicago & Eastern Illinois Inc	1.7	1.6	.7	1.7	44
Chicago Great Western Income 4	3.3	3.8	2.5	5.1	78
Chicago Milwaukee - Income A 4	3.2	3.2	2.5	2.3	61
Chicago North Western - Income	2.5	2.4	1.9	2.2	58
Chicago Rock Island - Income 4	5.5	3.6	5.5	6.5	94
Denver Rio Grande & Western In	1.8	1.2	2.1	2.6	67
Erie - Income 4 1/2% - 2015	2.0	2.4	1.8	3.0	68
Gulf Mobile & Ohio Income 4% -	2.0	1.8	2.2	3.0	59
Minneapolis St. Paul & S. S. M	7.6	6.4	7.6	10.0	85
New York, New Haven & Hartford	1.7	1.6	.8	1.5	45
Norfolk Southern Income 5% - 2	1.6	1.7	1.4	2.7	84
St. Louis San Francisco Income	2.4	1.9	2.3	2.3	59
Seaboard Airline Income 4 1/2%	2.9	2.0	2.2	3.2	68
Western Pacific Income 4 1/2%	6.3	4.0	4.8	6.2	100

* Based on F

	Price 1/3/49	Price X 1948 Est. Earns.
Florida East Coast - Based on	?	
Atlantic Coast Line - Based o	?	
on part. basis for P		
on non-part. basis		
Atlantic Coast Line - Present	45	5.0
Atchison Topeka & Santa Fe Co	99	4.5
Chicago & Eastern Illinois Co	5	8.3
Chicago Great Western Common	9	1.6
Chicago Milwaukee Common	7	4.0
Chicago North Western Common	14	4.5
Chicago Rock Island Common	32	2.9
Denver Rio Grande & West Comm	25	1.9
Erie Common	13	2.6
Gulf Mobile & Ohio Common	13	2.6
Minneapolis St. Paul & S. S.	10	3.6
New York New Haven & Hartford	8	2.7
Norfolk Southern Common	20	2.4
Northern Pacific Common	16	3.6
Pennsylvania Common	17	7.1
Reading Common	22	4.0
St. Louis San Francisco Comm	10	3.1
Seaboard Airline Common	17	1.7
Western Pacific Common - on	26	5.3
- on	26	3.5

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1st Ref. Committee EXHIBIT no. 4
4227 A.B.S.

EXHIBIT 4
F.E.C. Rpts
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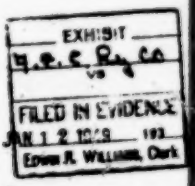
JAN 11 1943
Edwin R. Williams, Clerk

PACKAGE VALUE OF F.E.C. SECURITIES OFFERED EACH
$1,000 F.E.C. FIRST & REFUNDING BOND UNDER
ANIVERS PLAN UNDER TWO ESTIMATED LEVELS OF
NORMAL EARNINGS

	Allotment Principal or Par Value	$1.5 Mil. Earns. Est. Price	$1.5 Mil. Earns. Est. Value	$1.8 Mil. Earns. Est. Price	$1.8 Mil. Earns. Est. Value
F.E.C. Incomes	$450	75	$337	90	$405
F.E.C. Common	450	25	113	40	180
Total	$900		$450		$585

5 % Committee EXHIBIT No 5



CURRENT ANNUAL INCOME ON THE A. C. L. PACKAGE OF SECURITIES

Security	Par or Prin. Amount	Annual Rate	Annual Income
A.C.L. First Div. 3 1/2's	$300	3.50%	$10.50
A.C.L. Inc. Div. 4 1/4's	175	4.25%	7.44
A.C.L. Pfd.	200	$4.00	8.00
A.C.L. Com.	133	$4.00	5.33
			$31.27

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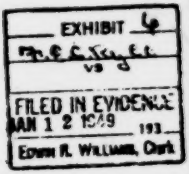
57 Committee EXHIBIT 4



ESTIMATED ANNUAL INCOME UNDER CURRENT CONDITIONS ON THE F. E. C. PACKAGE OF SECURITIES

Security	Principal or Par Amount	Annual Rate	Annual Income
F.E.C. Income 4 1/2's	$450	4 1/2%	$20.25
F.E.C. Common	450	1.60*	7.20
			$27.45

* Assuming F.E.C. will pay out 50% of earnings which is a slightly larger percentage than A.C.L. is now paying out.

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S.A. Engineering Exc 1
452 Pages
1
F.E.C. Ry Co
JAN 1

	Sources
GENERAL ADDITIO	
1941-1946	No. 1 of Sept. 18, 1948
NEW EQUIPMENT	
1941-1946	No. 1 of Sept. 18, 1948
Less obligati	
to 1940, ou	olders' report for year 1947
Balance	
Plus equipmen	Coverdale & Colpitts by
	ov. 12, 1948
Total	
FORT LAUDERDALE	
1945	No. 1 of Sept. 18, 1948
RAIL PROGRAM	
To June 30, 1	No. 3 of Sept. 18, 1948
Estimate for	1948 estimate on statement furnished
	ts by Trustees, dated Nov. 12, 1948
	ement No. 3 of Sept. 18, 1948
Total	
FORT PIERCE CU	No. 6 of Sept. 18, 1948
Grand To	

Coverdale & Colpitts
Consulting Engineers
120 Wall St., New York

OPY

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S. A. Lynch Ex 2

No. 2
F.E.C. Ry Co

COVERDALE & COLPITTS

REVENUE TONNAGE COMPARISONS

F.E.C. RY. VS U.S., SOUTHERN REGION, FLORIDA AND COMPETING RAILROADS

1940 AND 1947

	1940	1947	Per cent 1947 Over 1940
TONNAGE ORIGINATED ON LINE (000)			
F.E.C. Ry.	693	2,215	220
A.C.L. R.R. (A)	12,813	24,051	88
S.A.L. Ry.	11,666	20,047	72
State of Florida, excl. F.E.C. (B)	13,523	26,732	98
Southern Region, excl. F.E.C.	133,156	227,239	67
All Class I Roads in U.S., excl. F.E.C.	1,008,728	1,535,331	52
TONNAGE TERMINATED ON LINE (000)			
F.E.C. Ry.	1,427	3,173	122
A.C.L. R.R. (A)	13,091	23,278	78
S.A.L. Ry.	11,892	20,816	75
State of Florida, excl. F.E.C. (B)	12,752	25,826	103
Southern Region, excl. F.E.C.	112,253	198,419	75
All Class I Roads in U.S., excl. F.E.C.	979,510	1,406,191	44
TOTAL TONS CARRIED (000)			
F.E.C. Ry.	1,747	4,594	163
A.C.L. R.R. (A)	20,461	36,843	80
S.A.L. Ry.	19,017	35,261	85
Southern Region, excl. F.E.C.	233,659	411,647	76
All Class I Roads in U.S., excl. F.E.C.	1,841,543	2,883,995	57

(A) Includes Atlanta, Birmingham and Coast R.R.
(B) Carload traffic only.

Sources: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States, and I.C.C. Statistics of Railways in the United States.

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S.a Signal Ex 3

COVERDALE & COLPITTS

EXHIBIT 3
F.E.C. Ry Co
JAN 1 1 1949

FREIGHT REVENUE* COMPARISONS

1940 AND 1947

	1940 (Thousands omitted)	1947 (Thousands omitted)	Per cent Increase
Florida East Coast	$ 6,443	$ 16,898	162.3
Seaboard Air Line	36,492	94,388	158.7
Atlantic Coast Line	40,033	95,987	139.7
Southern Railway	88,592	186,186	110.2
Central of Georgia	13,472	26,429	96.2
Louisville & Nashville	85,587	162,112	89.4
Southern Region	452,811	974,183	115.1
All Class I Railroads	3,537,150	7,040,973	99.1

* Accounts 101 and 121.

Sources:
I.C.C. Statistics of Railways in the U.S., and A.A.R. Bureau of Railway Economics "Railway Revenues and Expenses".

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D. A. Lynch Exc 4

COVINGTON & BURLING

4827 Eq.

EXHIBIT 4
M. P. C. Rys
vs
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JAN 1 1 1949
Ernest R. Williams, Clerk

PASSENGER REVENUE* COMPARISONS

1940 AND 1947

	1940	1947	Per cent Increase
	(Thousands omitted)		
Atlantic Coast Line	$ 8,091	$ 21,991	171.8
Florida East Coast	3,094	7,586	145.2
Louisville & Nashville	6,475	15,561	140.3
Southern Railway	9,178	20,867	127.4
Central of Georgia	1,330	2,901	118.1
Seaboard Air Line	7,526	15,621	107.6
Southern Region	51,084	127,775	150.1
All Class I Railroads	417,269	963,322	130.9

* Accounts 102 and 122

Sources;
I.C.C. Statistics of Railways in the U.S., and A.A.R. Bureau of Railway Economics "Railway Revenues and Expenses".

S.A. Lynch Ex 5

EXHIBIT 5
IN S. C. Rate C

RAILWAY OPERATING REVENUE COMPARISONS

1940 AND 1947

	1940	1947	Per cent Increase
	(Thousands omitted)		
Florida East Coast	$ 10,749	$ 27,054	151.7
Seaboard Air Line	48,491	119,141	145.8
Atlantic Coast Line	53,543	128,430	139.9
Southern Railway	105,905	222,835	110.4
Central of Georgia	16,566	32,378	95.4
Louisville & Nashville	98,002	189,697	93.5
Southern Region	343,276	1,194,700	119.1
All Class I Railroads	4,296,601	8,684,694	102.1

SOURCES:

I.C.C. Statistics of Railways in the U.S., and A.A.R. Bureau of Railway Economics "Railway Revenues and Expenses".

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D a Lynch Ex No. 6

4827 B&O-D.

EXHIBIT 6
T & C. Ry Co
V3
FILED IN CVRK'S
JAN 1 1 1915
Edwin R. Williams, Clerk

Y	L.C.L. Traffic	Grand Total
19	65,636	1,747,096
18	65,514	1,822,002
19*	74,208	3,464,788*
18*	87,078	5,912,616*
17	97,303	4,976,950
11	112,515	3,893,346
15	130,459	4,779,752
14	121,766	4,593,681
Receivers' estimat	79,419	1,924,246
Increase 1947 over		
T	42,347	2,669,435
P	53	139
Increase 1947 over		
T	56,130	2,846,585
P	86	163

2822

Coverdale & Colpitts
Consulting Engineers
120 Wall St., New York

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COVERDALE & COLPITTS

FLORIDA EAST COAST RAILWAY COMPANY

TONS OF REVENUE FREIGHT CARRIED
NINE MONTHS ENDED SEPTEMBER 30, 1947 AND 1948

	9 Months Ended 9/30/47	9 Months Ended 9/30/48	Decrease	Per cent
Products of agriculture	861,941	901,340	39,399*	4.6*
Animals and products	69,819	59,781	10,038	14.4
Products of mines	760,380	628,486	131,894	17.3
Products of forests	372,188	435,655	63,467*	17.1*
Manufactures and miscellaneous (A)	1,313,358	1,278,903	34,455	2.6
Total Carload	3,377,686	3,304,165	73,521	2.2
All l.c.l. freight	89,628	74,921	14,707	16.4
Grand Total	3,467,314	3,379,086	88,228	2.5

* Increase

(A) Includes forwarder traffic.

Source: F.E.C. Form 1306.

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B.A. Lynch Exs 8
4727 Fla.

COVENDALE & COLPITTS

EXHIBIT 8
F.E.C. Ry Co.

JAN 1 1 1948

FLORIDA EAST COAST RAILWAY COMPANY

NEW INDUSTRIES LOCATED ON RAILROAD, 1940 TO 1947, INCLUSIVE, AND NUMBER OF CARLOADS OF ROAD RAIL TRAFFIC HANDLED IN YEAR 1947 TO AND FROM SUCH INDUSTRIES

Commodity	Number of Industries	Carloads of Road Haul Traffic in 1947
PRODUCTS OF AGRICULTURE		
Vegetables	27	2,288
Citrus packinghouses	9	2,141
Vegetable packinghouses	8	2,084
Bananas	1	697
All other	7	1,226
Subtotal	52	8,436
ANIMALS AND PRODUCTS		
Various	2	100
PRODUCTS OF MINES		
Asphalt	1	730
All other	2	125
Subtotal	3	855
PRODUCTS OF FORESTS		
Lumber	11	1,251
All other	5	134
Subtotal	16	1,385
MANUFACTURES AND MISCELLANEOUS		
Construction materials, except concrete	44	6,746
Car ferry	1	6,732
Export and import freight	2	1,687
Alcoholic beverages	20	1,537
Concrete products	16	1,406
Petroleum products	20	1,111
Fertilizer, feed, farm supplies, etc.	18	909
Canned goods	4	377
All other	52	1,907
Subtotal	177	22,712
Grand Total	250	33,488

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Lynch Exhs 9.
4927 Adm. D.
EXHIBIT 9
E. C. Ryco
vs
IN EVIDENCE
1 1949 193
WILLIAMS, Clerk

Year	Rail Tonna... in F...	
	On F.E.C. Ry.	ntracoastal Waterway ...cksonville to Miami
1940	693	454
1941	722	442
1942	1,743	457
1943	3,415	415
1944	2,830	365
1945	2,114	456
1946	2,543	301
Per cent increase 1946 over 19...	267	-34

(A) C
(B) J

Sources:

]

]

... Colpitts
Engineers
... New York

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S.A. Lynch Ex no. 10

GOVERNMENT'S EXHIBIT

EXHIBIT 10
U.S. v. Pryor
VB

FILED IN EVIDENCE
JAN 11 1945
Clerk U.S. Dist. Court

COMPARISON OF RAIL AND TRUCK TONNAGE IN SOUTHERN REGION

1940 - 1947

Year	Rail Tonnage (A)		Truck Tonnage (B) Intercity Trucks in Southern Region
	Florida East Coast Railway	All Other Class I Roads Southern Region	
	(Thousands of tons)		
1940	1,747	233,699	4,818
1941	1,822	299,410	6,547
1942	3,465	389,328	6,923
1943	3,913	412,680	8,034
1944	4,977	408,308	10,077
1945	3,893	390,332	9,538
1946	4,760	369,801	9,415
1947	4,594	411,648	12,346
Per cent increase 1947 over 1940	163	76	156

(A) Revenue tons carried.
(B) Revenue tons carried by common and contract carriers.

Sources:

I.C.C. Freight Commodity Statistics, Class I Steam Railways in the U.S.;
I.C.C. Bureau of Transport Economics and Statistics, Statement Q-800.

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4827 Eq. 8.

EXHIBIT 11
U.S. C. Ry Co
vs
FILED IN EVIDENCE
JAN 1 1 1949 19
EDWIN R. WILLIAMS, Clerk

Method of Transport	1939-40	1946-47	1947-48
Rail freight	76,005	,178	99,103
Express	1,691	,578	3,648
Boat	15,670	,839	5
Truck	38,712	,007	46,155
Total	132,078	1,602	148,911
Rail freight	57.5	2.1	66.6
Express	1.3	5.1	2.4
Boat	11.9	5.3	.0
Truck	29.3	1.5	31.0
Total	100.0	0.0	100.0

Source:
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EXHIBIT 12
F.E.C. Ry.
vs
FILED IN EVIDENCE
Jan 11 1949
Wm. R. Williams, Clerk

COMPARISON OF REVENUE PASSENGERS CARRIED

F.E.C. RAILWAY VS. COMPETING AIR LINES, WATER CARRIERS AND MOTOR COACHES

1940 - 1946

Year	Rail	Water	Bus	Air
	F.E.C. Railway	Competitive Florida Ports (A)	Competitive Motor Coach Lines (B)	Competitive Cities(C)
September, 1940				5,272
1940	629,139	496,870	2,034,369	
1941	741,983	422,103	2,453,064	
1942	1,338,955	251,729	5,006,486	
1943	2,437,286	255,458	8,284,331	
1944	2,525,109	585,402	8,254,877	
1945	2,427,302	770,557	8,564,547	
1946	1,460,950	585,559	7,535,368	
September, 1946				60,942
Per cent increase 1946 over 1940	132	18	270	1,056

(A) Commercial boat passengers at Jacksonville, Palm Beach, Port Everglades, Miami and Key West

(B) Florida Greyhound Lines, Glades Motor Lines and Tamiami Trail Tours

(C) Passengers to and from Jacksonville, Daytona Beach, Vero Beach, West Palm Beach and Miami

Sources: F.E.C. Annual Reports to I.C.C.
Annual Report of Chief of Engineers, U. S. Army, 1947, Part 2
I.C.C. Statement Q-730
Civil Aeronautics Board Air Line Traffic Surveys

D.A. Exhibit No 13
4827 Eq. 9

COVERDALE & COLPITTS

EXHIBIT 13
FILED IN EVIDENCE
Ernest A. Watson, Clerk

INCREASE IN LAND IN FARMS*

COUNTIES SERVED BY FLORIDA EAST COAST RAILWAY COMPANY
VS
STATE OF FLORIDA AND ENTIRE UNITED STATES

Counties	1940	1945	Increase 1940-45
	(Acres)		
Duval	61,067	66,000	8.1
St. Johns	33,946	117,000	244.7
Flagler	30,786	232,000	653.6
Putnam	89,073	154,000	94.0
Volusia	265,286	234,000	-11.1
Brevard	170,959	200,000	17.0
Indian River	112,877	151,000	33.8
Okeechobee	171,620	265,000	54.4
St. Lucie	154,668	292,000	88.8
Martin	77,204	176,000	272.0
Palm Beach	80,175	278,000	246.7
Broward	77,559	108,000	39.2
Dade	70,505	78,000	10.6
Total	1,333,705	2,331,000	74.8
State of Florida	8,337,708	13,084,000	56.9
United States	1,060,892,374	1,141,615,000	7.6

* Includes considerable areas of land not actually under cultivation and some land not even used for pasture or grazing, but all such land must have been under the control of the operator and considered a part of his farm. Large areas of timberland or other non-agricultural land held by an operator of a farm as a separate business, and not used for pasture or grazing, or for any other farm purpose were excluded.

Sources:
1940 - Sixteenth Census of the United States, Vol. I, Part 3.
1945 - County Data Book, Supplement to the Statistical Abstract of the United States.

F. E. C. Ry. Ex No
4327
COVERDALE & COLPITTS
EXHIBIT 14
F.E.C.Ry.
FILED
1949
Ernest R. Williams, Clerk

INCREASE IN ORANGE [A] AND GRAPEFRUIT PRODUCTION

COUNTIES SERVED BY FLORIDA EAST COAST RAILWAY COMPANY

TO

STATE OF FLORIDA AND ENTIRE UNITED STATES

Counties	Field Boxes Harvested [B]		Per cent Increase
	1940 Census	1945 Census	
	(In Thousands)		
Duval	10.1	9.1	-9.9
St. Johns	3.2	72.7	2,171.9
Flagler	3.2	1.4	-56.3
Putnam	218.9	481.5	120.0
Volusia	1,199.8	1,273.5	6.3
Brevard	1,091.1	1,841.0	75.1
Indian River	1,260.0	2,381.8	89.0
Okeechobee	13.2	7.3	-44.7
St. Lucie	973.4	3,087.9	216.6
Martin	65.6	211.2	222.0
Palm Beach	82.3	166.5	102.1
Broward	205.8	317.1	54.1
Dade	355.2	253.9	-24.2
Total	5,423.8	10,106.7	86.3
State of Florida	40,788.9	64,880.7	59.1
United States (C)	93,973.6	125,039.1	33.1

Source: County and State data from Vol. 1, 1945 U.S. Census of Agriculture, Part 18, Florida, Statistics by Counties.
United States totals from Vol. II, 1945 U.S. Census of Agriculture, United States Statistics.

(A) Includes tangerines and mandarins.
(B) A field box as used in the United States Census for Florida contains 90 pounds of oranges, tangerines or mandarins, and 82 pounds of grapefruit.
(C) Census shows United States totals in tons, converted here to equivalent Florida field boxes.

Note: The 1940 Census figures relate to the crop harvested in 1939-1940 from the bloom of 1939. The 1945 Census figures relate to the crop harvested in 1943-1944 from the bloom of 1943.

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COVERDALE & COLPITTS

EXHIBIT 15
F. E. C. Ry Co

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VALUE OF VEGETABLE CROPS (EXCLUDING POTATOES) HARVESTED FOR SALE AND FOR FARM HOUSEHOLDS' USE

COUNTIES SERVED BY FLORIDA EAST COAST RAILWAY COMPANY VS STATE OF FLORIDA AND ENTIRE UNITED STATES

Counties	Value of Vegetable Crops (Thousands of Dollars)		Increase Per cent
	1940 Census	1945 Census	
Duval	224.6	259.0	15.3
St. Johns	127.1	699.4	450.5
Flagler	78.2	181.0	131.5
Putnam	101.4	260.9	157.3
Volusia	80.7	272.5	237.4
Brevard	39.3	72.5	84.5
Indian River	162.2	440.3	171.5
Okeechobee	17.1	29.1	70.2
St. Lucie	311.1	209.8	-32.6
Martin	174.2	643.7	269.5
Palm Beach	5,923.5	11,451.0	93.3
Broward	2,270.0	5,034.9	121.8
Dade	1,668.2	4,343.8	160.4
Total	11,177.6	23,897.7	113.8
State of Florida	21,892.6	46,834.0	113.9
United States	410,916.2	1,032,626.1	151.3

Source: U.S. Census tables.

Ex. 16
F E C Ry Co

	d	Per cent Increase	
	United States	Florida	United States
l farm construction	350.0	88.2	54.9
real estate loans t	2,024	33.3	16.9
er of head of cattl	81,050	75.5	33.6
l value of all live	11,979	206.7	133.4
grapefruit production (	62,860	107.5	78.7
ge and tangerine pr	115,580	121.8	52.8
h fruits and vegeta	964,085	20.3	27.9

Exh 18

F-E C. Ry Co

INCREASE IN EFFECTIVE BUYING INCOME

COUNTIES SERVED BY FLORIDA EAST COAST RAILWAY COMPANY

AND

STATE OF FLORIDA AND ENTIRE UNITED STATES

Counties	Effective Buying Income*		Per cent Increase
	1940	1947	
	(Thousands of Dollars)		
Duval	$ 125,358	$ 381,998	204.7
St. Johns	9,399	27,454	192.1
Flagler	721	2,211	194.4
Putnam	6,402	18,821	194.0
Volusia	31,827	95,870	201.2
Brevard	8,187	23,965	192.8
Indian River	3,514	10,305	193.3
Okeechobee	1,079	3,158	192.7
St. Lucie	6,502	19,079	193.4
Martin	2,269	7,334	192.3
Palm Beach	50,514	148,338	193.7
Broward	21,605	64,005	196.3
Dade	175,047	518,399	196.1
Total	442,694	1,321,077	198.4
State of Florida	900,925	2,747,226	204.9
United States	74,182,005	193,801,256	161.3

SOURCE: Sales Management's "Survey of Buying Power", 1940 data from issue of April 10, 1941 and 1947 data from issue of May 10, 1948.

* Effective buying income is defined by Sales Management as "income from all sources, such as wages, salaries, dividends, and interest, Government payments and all miscellaneous items of income" and is "Gross Income before taxes are paid."

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4-22-48-9

COVERDALE & COLPITTS

EXHIBIT 19
F.E.C.Ry Co
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JAN 11 1949 - 193
Sidney R. Watson, Clerk

INCREASE IN RETAIL SALES

COUNTIES SERVED BY FLORIDA EAST COAST RAILWAY COMPANY

VS

STATE OF FLORIDA AND ENTIRE UNITED STATES

Counties	Retail Sales		Per cent Increase
	1940	1947	
	(Thousands of Dollars)		
Duval	$ 83,402	$ 264,871	210.1
St. Johns	6,622	17,222	160.0
Flagler	526	1,364	159.3
Putnam	4,637	12,079	160.5
Volusia	21,303	59,392	178.8
Brevard	5,903	15,369	160.4
Indian River	2,733	7,158	160.0
Okeechobee	835	2,179	161.0
St. Lucie	5,062	13,162	160.0
Martin	1,775	4,624	160.5
Palm Beach	39,550	126,994	221.0
Broward	17,670	52,815	198.9
Dade	151,386	443,245	192.8
Total	343,424	1,020,434	197.1
State of Florida	676,209	1,995,008	194.7
United States	45,776,285	117,594,174	156.9

Source: Sales Management's "Survey of Buying Power", 1940 data from issue of April 10, 1941 and 1947 data from issue of May 10, 1948.

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EXHIBIT 20
T.E.C. Pyco

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Clerk

	d	Per cent increase	
	United States	Florida	United States
Total population (A)	143,796	25.5	9.2
Number of domestic el	29,769	65.7	24.2
Number of residential	212,600	209.6	91.4
Cash receipts from fa	30,186	216.5	261.2
Total manufacturing v	36,045	168.2	134.5
Net salaries and wage	105,215	203.6	139.9
Total income payments	189,734	185.7	150.1
Effective buying inco	193,801	204.9	161.3
Sales of ordinary li	15,092	202.6	134.9
Bank deposits (as of	155,901	322.3	128.5
Retail sales (D)	117,594	194.8	156.9

Coverdale & Colpitts
Consulting Engineers
120 Wall St., New York

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FEC Ry Co

FLORIDA EAST COAST RAILWAY COMPANY

COMPARISON OF PREWAR, PEAK WAR AND POSTWAR PASSENGER TICKET SALES AT MIAMI AND WEST PALM BEACH

	Miami	West Palm Beach
	(Thousands of dollars)	
Prewar - year 1941	$ 2,914	$ 369
Peak war year	18,178 (1943)	2,125 (1945)
Postwar - year 1947	5,932	868
Per cent 1947 of peak war year	32.6%	40.8%

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4327 Misc

GOVERNDALE & OSLIFFE

EXHIBIT 21
F.E.C. R.R. Co.
VS
RECEIVED IN EVIDENCE
JAN 1 1 1949 19
Erwin d. Williams, Clerk

TONNAGE OF PRODUCTS OF AGRICULTURE ORIGINATED ON LINE F.E.C. RY. VS U.S., SOUTHERN REGION AND CONNECTING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
	(Thousands of tons)				
1940	228	1,008	549	9,081	88,595
1941	198	1,106	643	10,044	99,975
1942	658	1,685	865	12,598	116,660
1943	985	2,511	1,270	15,036	148,046
1944	1,148	2,407	1,423	15,435	144,538
1945	1,166	2,585	1,514	16,451	158,405
1946	1,395	2,379	1,274	15,632	148,546
1947	944	1,849	1,004	15,414	157,224
Per cent 1947 over 1940	314	83	83	70	77
9 Mos. ended Sept. 30, 1947	789				
9 Mos. ended Sept. 30, 1948	830				
Per cent increase	6				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

[redacted]

[redacted]
F.E.C. RY. VS U.S., [redacted] AND CONNECTING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	241	24,846	11,963	399,021	881,286
1941	519	24,575	15,377	380,675	820,095
1942	12,448	59,063	6,335	309,958	499,416
1943	20,126	134,014	19,415	284,681	352,024
1944	25,822	34,310	45,712	332,220	645,689
1945	60,041	5,216	60,732	738,725	894,868
1946	51,623	7,760	74,085	989,449	1,134,718
1947	36,132	9,196	47,358	958,676	1,212,550
Per cent 1947 over 1940	14,895	-63	296	140	38
9 Mos. ended Sept. 30, 1947	27,016				
9 Mos. ended Sept. 30, 1948	9,950				
Per cent decrease	63				

(A) Including Atlanta, Birmingham & Coast R.R.

SOURCE: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

TONNAGE OF GRAPES AND GRAPEFRUIT ORIGINATED ON LINE F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	32,099	361,767	225,317	587,721	2,083,055
1941	48,609	455,320	287,195	743,070	2,286,998
1942	160,366	646,288	362,392	1,009,124	2,698,486
1943	184,556	945,282	593,610	1,543,241	3,328,886
1944	230,574	1,016,406	633,770	1,652,406	3,697,154
1945	184,841	709,171	449,153	1,159,681	3,496,082
1946	213,908	861,059	538,741	1,401,630	3,272,767
1947	138,067	707,917	465,156	1,174,739	3,043,796
Per cent 1947 over 1940	330	96	106	100	46
9 Mos. ended Sept. 30, 1947	103,700				
9 Mos. ended Sept. 30, 1948	168,989				
Per cent increase	63				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

[redacted]

[redacted] OF ALL CLASS I [redacted], INCLUDING [redacted],
CONNECTED ON LINE
F.E.C. RY. VS U.S., [redacted] AND CONNECTING RAILROADS

	F.E.C. Ry.	A.C.L. RR. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	19,233	73,477	40,514	284,729	2,720,349
1941	24,389	71,606	44,466	315,421	2,873,990
1942	14,630	73,972	49,197	326,877	2,867,977
1943	15,326	51,458	48,806	227,428	2,598,269
1944	21,472	96,378	85,961	429,805	3,824,799
1945	28,388	131,660	99,194	605,227	3,625,866
1946	30,324	115,504	97,489	525,105	3,619,108
1947	21,475	100,802	93,313	450,435	3,487,405
Per cent 1947 over 1940	12	37	130	58	28
9 Mos. ended Sept. 30, 1947	20,143				
9 Mos. ended Sept. 30, 1948	15,775				
Per cent decrease	22				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

TONNAGE OF POTATOES, OTHER THAN SEED, ORIGINATED ON LINE
F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	68,472	60,405	24,260	260,438	3,243,217
1941	40,859	46,759	24,140	263,546	3,253,741
1942	74,663	62,928	23,971	254,836	3,840,690
1943	67,230	100,741	25,436	361,389	5,166,379
1944	72,783	48,344	23,154	222,784	5,880,713
1945	102,638	52,936	31,786	287,640	5,504,199
1946	143,543	88,669	37,049	366,069	6,419,308
1947	55,699	40,913	28,000	219,929	5,869,209
Per cent 1947 over 1940	-19	-32	15	-16	81
9 Mos. ended Sept. 30, 1947	54,747				
9 Mos. ended Sept. 30, 1948	67,907				
Per cent increase	24				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

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TONNAGE OF TONNAGE ORIGINATED ON LINE
F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	25,644	18,486	21,490	66,299	210,342
1941	17,000	9,697	12,099	42,877	223,613
1942	32,372	18,867	15,084	57,492	287,511
1943	32,647	12,319	15,650	48,410	298,879
1944	40,744	8,523	11,463	38,427	331,675
1945	61,377	9,122	16,160	48,149	397,854
1946	66,551	8,352	16,294	49,942	414,407
1947	29,422	4,199	8,892	26,212	302,456
Per cent 1947 over 1940	15	-77	-59	-60	44
9 Mos. ended Sept. 30, 1947	25,273				
9 Mos. ended Sept. 30, 1948	32,649				
Per cent increase	29				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

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TONNAGE OF ALL OTHER FRESH VEGETABLES, INCLUDING FROZEN, ORIGINATED ON LINE
F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	79,421	125,525	48,452	250,050	2,086,433
1941	62,267	114,344	43,351	236,240	2,225,635
1942	98,249	138,241	58,404	281,682	2,588,584
1943	146,347	141,280	82,636	310,793	2,961,294
1944	167,142	164,926	96,025	394,368	3,398,620
1945	178,774	190,035	122,519	464,174	3,528,800
1946	176,062	192,305	126,887	445,296	3,532,279
1947	114,803	130,477	76,641	312,018	3,474,728
Per cent 1947 over 1940	45	4	58	25	67
9 Mos. ended Sept. 30, 1947	103,712				
9 Mos. ended Sept. 30, 1948	121,062				
Per cent increase	17				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

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TONNAGE OF ANIMALS AND PRODUCTS ORIGINATED ON LINE F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
	(Thousands of tons)				
1940	3	31	14	1,263	15,453
1941	4	50	26	1,398	16,806
1942	10	76	41	1,767	20,609
1943	12	105	65	2,036	22,924
1944	8	124	112	2,261	25,405
1945	7	95	88	2,046	23,741
1946	6	60	44	1,739	21,581
1947	6	83	33	1,924	19,710
Per cent 1947 over 1940	100	168	136	52	28
9 Mos. ended Sept. 30, 1947	5				
9 Mos. ended Sept. 30, 1948	5				
Per cent increase	-				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

TONNAGE OF PRODUCTS OF MINES ORIGINATED ON LINES F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
	(Thousands of tons)				
1940	62	5,197	5,232	75,913	570,158
1941	61	7,799	6,752	95,421	684,573
1942	325	10,350	9,052	120,294	798,889
1943	874	10,705	8,575	112,775	790,511
1944	565	7,241	5,195	106,583	784,700
1945	171	7,549	5,680	103,895	732,771
1946	354	9,844	8,401	105,836	717,452
1947	452	11,546	10,346	126,132	847,395
Per cent 1947 over 1940	629	122	98	66	49
9 Mos. ended Sept. 30, 1947	305				
9 Mos. ended Sept. 30, 1948	225				
Per cent decrease	26				

(A) Including Atlanta, Birmingham & Coast R.R.

SOURCE: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

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TONNAGE OF PRODUCTS OF FORESTS
ORIGINATED ON LINE
F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
	(Thousands of tons)				
1940	81	3,343	2,807	18,289	58,140
1941	85	4,133	3,125	23,510	71,455
1942	102	5,063	3,698	28,384	83,930
1943	121	5,057	3,144	26,948	80,472
1944	162	4,792	3,141	26,697	83,369
1945	157	4,834	3,134	25,955	75,447
1946	196	5,390	3,779	30,086	84,620
1947	221	5,444	3,421	29,603	86,807
Per cent 1947 over 1940	173	63	22	62	49
9 Mos. ended Sept. 30, 1947	168				
9 Mos. ended Sept. 30, 1948	233				
Per cent increase	39				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

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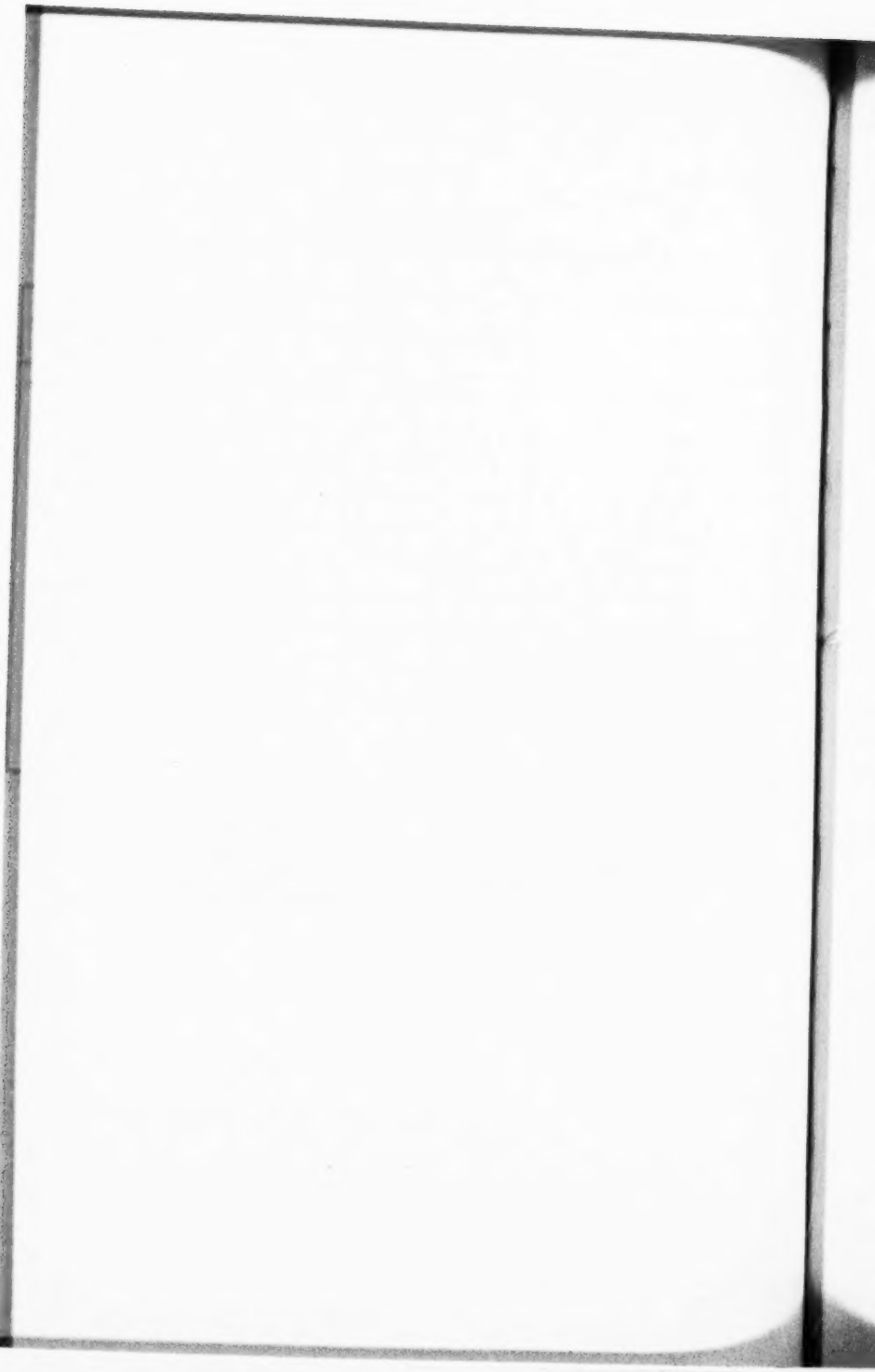
COVERDALE & COLPITTS

TONNAGE OF PULPWOOD
ORIGINATED ON LINE
F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940		1,077,577	1,833,812	5,625,534	12,268,625
1941	64	1,410,654	1,924,824	7,094,857	14,353,784
1942	73	1,836,864	2,151,929	9,358,488	17,880,835
1943	22,051	1,844,565	1,696,553	9,038,219	16,278,519
1944	74,281	1,907,782	1,790,954	10,224,136	19,576,838
1945	67,102	1,994,947	1,847,335	10,492,437	20,087,917
1946	85,888	2,012,503	2,221,146	11,048,764	21,446,529
1947	137,301	2,019,338	2,061,628	11,198,512	21,795,121
Per cent 1947 over 1940	-	87	12	99	78
Mos. ended Sept. 30, 1947	103,318				
Mos. ended Sept. 30, 1948	168,073				
Per cent increase	63				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.



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TONNAGE OF MANUFACTURES AND MISCELLANEOUS ORIGINATED ON LINE
F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
	(Thousands of tons)				
1940	296	3,068	2,852	28,632	261,714
1941	353	3,839	3,392	36,666	336,250
1942	624	3,977	3,903	40,612	360,769
1943	1,450	5,200	4,919	45,386	388,571
1944	909	5,802	5,278	51,483	430,363
1945	568	5,497	5,029	50,192	411,648
1946	547	5,700	5,084	46,700	367,532
1947 (B)	553	4,882	5,002	50,259	401,714
Per cent 1947 over 1940	87	59	75	76	53
9 Mos. ended Sept. 30, 1947	400				
9 Mos. ended Sept. 30, 1948	400				
Per cent decrease	0				

(A) Including Atlanta, Birmingham & Coast R.R.

(B) Includes forwarder traffic

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

TONNAGE OF FOOD PRODUCTS, N.O.S., IN CANS AND PACKAGES ORIGINATED ON LINE
F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	2,433	35,150	16,069	246,330	4,747,168
1941	4,991	83,979	33,848	457,003	7,062,036
1942	23,121	234,309	77,003	762,772	9,881,139
1943	45,584	372,940	123,847	1,004,808	11,273,923
1944	55,378	616,651	373,458	1,634,435	14,028,696
1945	60,031	575,460	433,367	1,767,316	13,187,995
1946	50,621	537,622	371,198	1,482,848	13,189,839
1947	38,958	370,381	266,650	1,216,105	11,990,273
Per cent 1947 over 1940	1,501	954	1,559	394	153
9 Mos. ended Sept. 30, 1947	30,512				
9 Mos. ended Sept. 30, 1948	27,060				
Per cent decrease	11				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

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TONNAGE OF SCRAP IRON AND SCRAP STEEL
ORIGINATED ON LINE
F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	5,281	79,162	72,957	967,608	12,745,552
1941	14,621	74,682	92,849	1,162,574	16,254,759
1942	22,166	150,075	128,690	1,641,047	18,605,415
1943	23,264	132,165	85,966	1,090,330	17,205,299
1944	14,196	123,124	85,677	1,002,763	16,758,830
1945	8,592	129,425	75,421	1,145,464	16,957,337
1946	11,960	72,325	61,685	896,130	14,735,815
1947	45,864	147,837	156,802	1,623,727	20,516,964
Per cent 1947 over 1940	768	87	115	68	61
9 Mos. ended Sept. 30, 1947	28,240				
9 Mos. ended Sept. 30, 1948	41,636				
Per cent increase	47				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

BLURRED CO

BLEED THROUGH

TONNAGE OF TOTAL CARLOAD TRAFFIC ORIGINATED ON LINE F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
	(Thousands of tons)				
1940	669	12,647	11,454	133,180	994,059
1941	700	16,926	13,939	167,040	1,208,859
1942	1,718	21,336	17,590	206,518	1,401,894
1943	3,383	23,599	17,837	206,398	1,458,931
1944	2,792	20,366	15,109	202,459	1,468,574
1945	2,069	20,359	15,465	198,539	1,402,011
1946	2,498	23,373	18,582	200,012	1,339,732
1947	2,176	23,605	19,805	223,331	1,512,809
Per cent 1947 over 1940	225	88	73	68	52
9 Mos. ended Sept. 30, 1947	1,666				
9 Mos. ended Sept. 30, 1948	1,704				
Per cent increase	2				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

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TONNAGE OF L.C.L. FREIGHT
ORIGINATED ON LINE
F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
	(Thousands of tons)				
1940	23	166	211	2,504	14,669
1941	22	184	240	2,942	18,069
1942	26	192	219	2,953	17,549
1943	32	223	246	3,276	18,879
1944	37	242	257	3,397	20,088
1945	45	335	265	3,533	20,788
1946	45	263	275	4,058	24,342
1947	39	246	242	3,907	22,522
Per cent 1947 over 1940	70	48	15	56	54
9 Mos. ended Sept. 30, 1947	29				
9 Mos. ended Sept. 30, 1948	24				
Per cent decrease	17				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

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TONNAGE OF TOTAL CARLOAD AND L.C.L. TRAFFIC ORIGINATED ON LINE F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
	(Thousands of tons)				
1940	693	12,813	11,666	135,682	1,008,728
1941	722	17,110	14,179	169,982	1,226,928
1942	1,743	21,528	17,809	209,472	1,419,444
1943	3,415	23,822	18,083	209,674	1,477,810
1944	2,830	20,608	15,366	205,855	1,488,661
1945	2,114	20,694	15,730	202,073	1,422,799
1946	2,543	23,656	18,857	204,071	1,364,074
1947	2,215	24,051	20,047	227,239	1,535,331
Per cent 1947 over 1940	220	88	72	67	52
9 Mos. ended Sept. 30, 1947	1,695				
9 Mos. ended Sept. 30, 1948	1,729				
Per cent increase	2				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

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4837 Mag

COVERDALE & COLPITTS

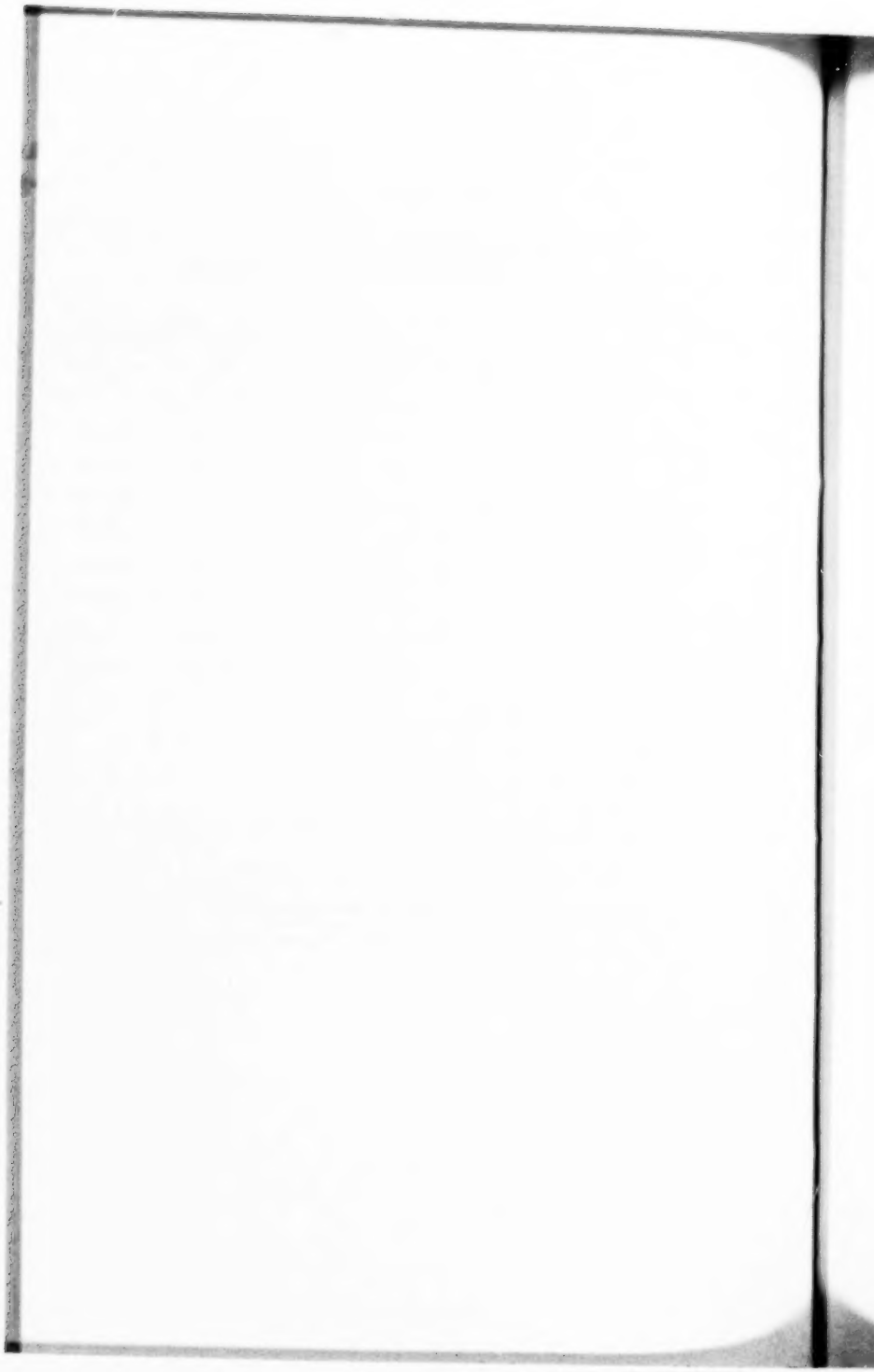
EXHIBIT 26
F.E.C. Ry Co
vs
FILED IN EVIDENCE
JAN 1 1 1949
Edwin E. Williams, Clerk

TONNAGE OF PRODUCTS OF AGRICULTURE
ORIGINATED ON LINE
F.E.C. RY. VS U.S., SOUTHERN REGION AND CONNECTING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	Roads in U.S. Excluding F.E.C.
	(Thousands of tons)				
1940	42	566	304	10,341	94,064
1941	53	638	696	11,680	105,597
1942	121	1,455	892	14,850	122,955
1943	210	2,309	1,300	20,017	158,088
1944	146	2,458	1,411	19,657	154,652
1945	165	2,616	1,643	20,551	167,584
1946	144	2,453	1,155	19,064	155,694
1947	118	1,947	987	18,440	161,744
Per cent 1947 over 1940	181	244	96	78	72
Mos. ended Sept. 30, 1947	75				
Mos. ended Sept. 30, 1948	63				
Per cent decrease	16				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.



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TONNAGE OF POTATOES, OTHER THAN SEED
ORIGINATED ON [illegible]
F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	12,753	14,805	18,220	399,816	3,413,243
1941	9,576	17,316	29,894	407,559	3,408,102
1942	28,363	47,739	64,423	523,307	4,075,463
1943	33,390	91,550	88,726	716,989	5,453,900
1944	33,112	100,455	112,023	779,714	6,260,618
1945	39,072	68,894	115,582	698,914	5,857,201
1946	28,682	54,285	93,255	681,290	6,710,169
1947	36,175	41,604	76,133	616,959	6,248,571
Per cent 1947 over 1940	184	181	318	54	83
9 Mos. ended Sept. 30, 1947	21,152				
9 Mos. ended Sept. 30, 1948	12,412				
Per cent decrease	41				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

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TONNAGE OF ANIMALS AND PRODUCTS ORIGINATED ON LINE F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
	(Thousands of tons)				
1940	52	113	80	1,371	15,868
1941	53	134	95	1,463	17,162
1942	48	189	146	1,843	21,198
1943	63	280	202	2,116	23,476
1944	93	311	255	2,323	26,216
1945	60	229	207	2,096	24,591
1946	64	208	141	1,801	22,208
1947	86	179	125	1,779	20,005
Per cent 1947 over 1940	65	58	56	30	26
9 Mos. ended Sept. 30, 1947	65				
9 Mos. ended Sept. 30, 1948	56				
Per cent decrease	14				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

TONNAGE OF MEATS, FRESH, F.O.S., TERMINATED ON LINE F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	21,811	48,606	29,615	290,725	3,094,801
1941	22,917	62,861	34,915	338,227	3,328,122
1942	25,236	75,231	40,996	401,347	3,747,570
1943	31,836	100,319	63,668	482,839	4,030,381
1944	36,542	102,601	90,166	544,735	4,792,618
1945	29,091	69,238	75,553	435,060	4,116,984
1946	24,876	53,837	38,732	323,698	3,345,571
1947	39,072	68,391	54,198	436,674	4,110,746
Per cent 1947 over 1940	79	41	83	50	33
9 Mos. ended Sept. 30, 1947	29,300				
9 Mos. ended Sept. 30, 1948	23,808				
Per cent decrease	19				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

BLURRED CO

BLEED THROUGH

TONNAGE OF PRODUCTS OF MINES
ORIGINATED ON LINE
F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
	(Thousands of tons)				
1940	268	6,638	6,068	55,048	526,379
1941	278	8,829	8,240	71,815	634,390
1942	686	10,427	10,658	88,258	730,912
1943	1,391	10,356	8,804	79,938	670,484
1944	820	7,615	6,121	73,456	657,515
1945	460	7,786	6,296	72,898	619,179
1946	804	9,804	7,869	77,473	613,502
1947	947	11,084	10,385	93,966	703,780
Per cent 1947 over 1940	253	67	71	71	34
9 Mos. ended Sept. 30, 1947	702				
9 Mos. ended Sept. 30, 1948	596				
Per cent decrease	15				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

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TONNAGE OF GRAVEL AND SAND, N.O.S.,
TERMINATED ON LINE
F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	48,021	1,255,540	608,613	6,432,818	32,654,177
1941	27,921	2,163,821	1,170,914	10,653,583	49,559,100
1942	104,590	2,546,940	2,635,800	16,482,020	76,519,891
1943	92,217	1,934,067	1,162,991	10,669,833	57,937,159
1944	64,917	972,843	558,519	6,174,090	38,677,621
1945	47,920	936,950	647,886	7,045,731	40,945,506
1946	107,139	1,966,766	1,176,668	10,949,983	55,686,112
1947	177,697	1,912,198	1,169,969	11,377,875	54,142,841
Per cent 1947 over 1940	370	52	92	77	66
9 Mos. ended Sept. 30, 1947	107,078				
9 Mos. ended Sept. 30, 1948	150,565				
Per cent increase	41				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

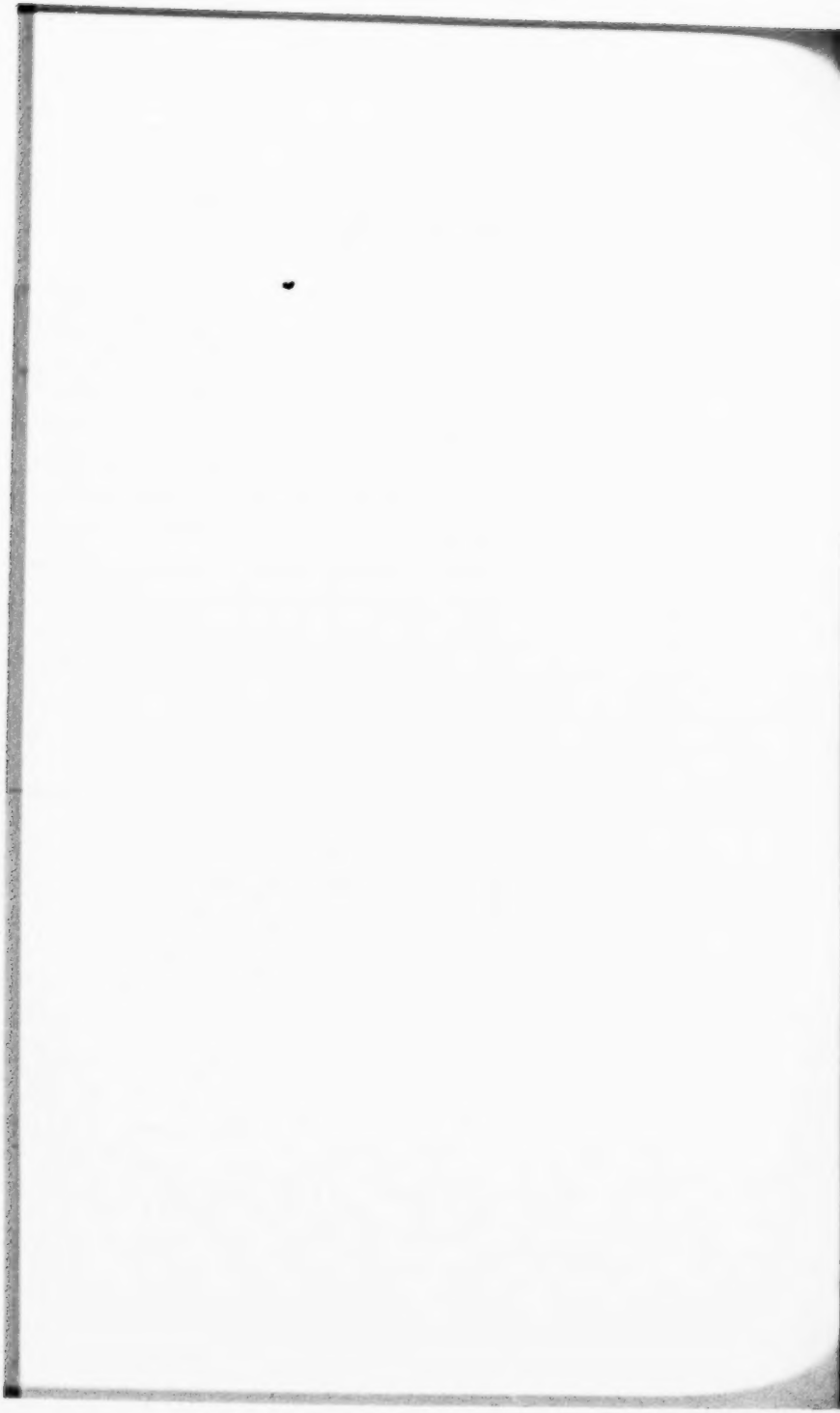
BLURRED CO

TONNAGE OF STONE AND ROCK, BROKEN, GROUND AND CRUSHED
ORIGINATED ON LINE
F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	136,594	1,202,441	1,404,477	5,588,930	15,571,182
1941	134,204	1,895,889	2,099,607	9,208,163	23,449,920
1942	431,799	3,497,872	3,670,968	13,996,678	39,027,503
1943	1,062,522	3,256,346	3,658,064	11,304,003	30,334,163
1944	535,307	1,051,125	1,451,678	5,597,674	18,687,230
1945	304,795	990,069	1,297,403	5,584,635	20,002,318
1946	598,068	1,408,714	1,657,928	8,266,343	26,428,177
1947	640,972	1,636,185	2,469,179	12,325,462	42,162,676
Per cent 1947 over 1940	369	36	76	121	171
9 Mos. ended Sept. 30, 1947	501,319				
9 Mos. ended Sept. 30, 1948	354,396				
Per cent decrease	29				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.



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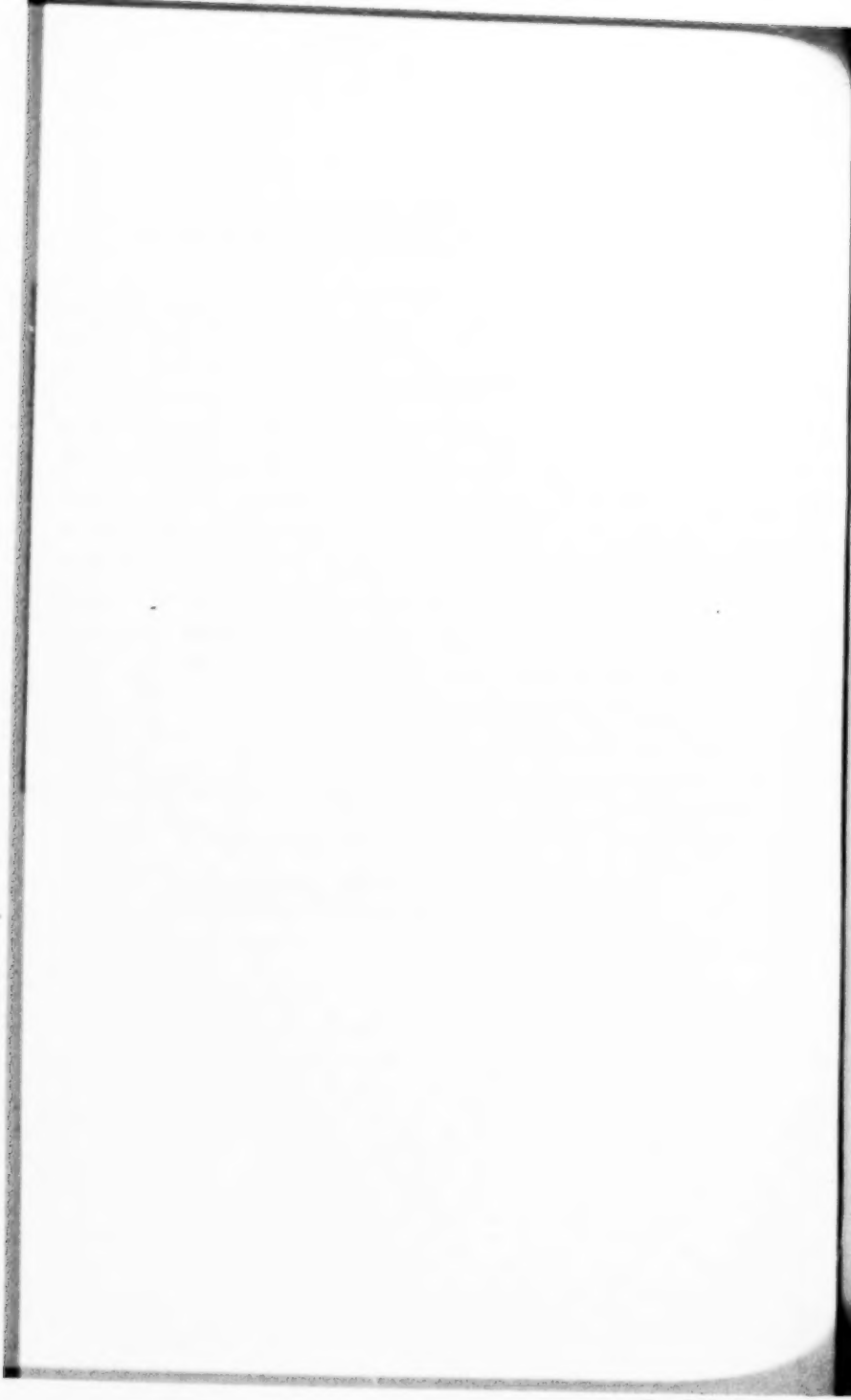
TONNAGE OF ASPHALT
TERMINATED ON LINE
F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	16,532	87,288	51,229	671,883	5,262,524
1941	15,880	124,973	76,136	846,395	6,706,952
1942	37,678	113,698	71,553	707,492	5,935,258
1943	54,655	137,962	62,836	597,168	5,012,303
1944	22,247	64,915	95,814	579,392	5,126,036
1945	21,971	71,572	64,180	731,417	5,362,663
1946	18,409	97,256	58,901	885,609	6,329,599
1947	32,944	108,774	83,986	1,104,011	7,039,457
Per cent 1947 over 1940	99	25	64	64	34
9 Mos. ended Sept. 30, 1947	21,000				
9 Mos. ended Sept. 30, 1948	21,165				
Per cent increase	1				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.



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TONNAGE OF PRODUCTS OF FORESTS ORIGINATED ON LINE F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
	(Thousands of tons)				
1940	233	2,159	2,355	13,608	61,619
1941	225	2,644	2,657	16,949	77,613
1942	244	3,272	3,852	21,550	90,212
1943	243	3,174	3,438	20,366	85,702
1944	270	3,168	3,674	20,324	87,024
1945	257	3,334	3,752	19,815	78,876
1946	369	3,553	4,132	22,241	88,224
1947	357	3,502	3,794	23,093	91,331
Per cent 1947 over 1940	53	62	61	70	48
9 Mos. ended Sept. 30, 1947	262				
9 Mos. ended Sept. 30, 1948	265				
Per cent increase	1				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

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TONNAGE OF LUMBER, SHINGLES AND LATH
ORIGINATED ON LINE
F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	186,394	385,416	258,373	3,794,672	23,066,758
1941	170,086	522,413	270,108	4,804,101	30,294,942
1942	174,437	825,674	488,451	6,692,929	37,442,021
1943	163,373	623,823	386,531	6,103,318	35,296,107
1944	165,309	544,213	353,406	5,409,526	33,753,569
1945	173,116	557,209	465,302	5,235,737	29,999,263
1946	272,589	544,696	504,013	5,914,670	34,838,275
1947	265,968	432,461	417,509	5,461,670	33,930,488
Per cent 1947 over 1940	43	12	62	44	47
9 Mos. ended Sept. 30, 1947	190,203				
9 Mos. ended Sept. 30, 1948	186,691				
Per cent decrease	2				

(A) Including Atlanta, Birmingham & Coast R.R.

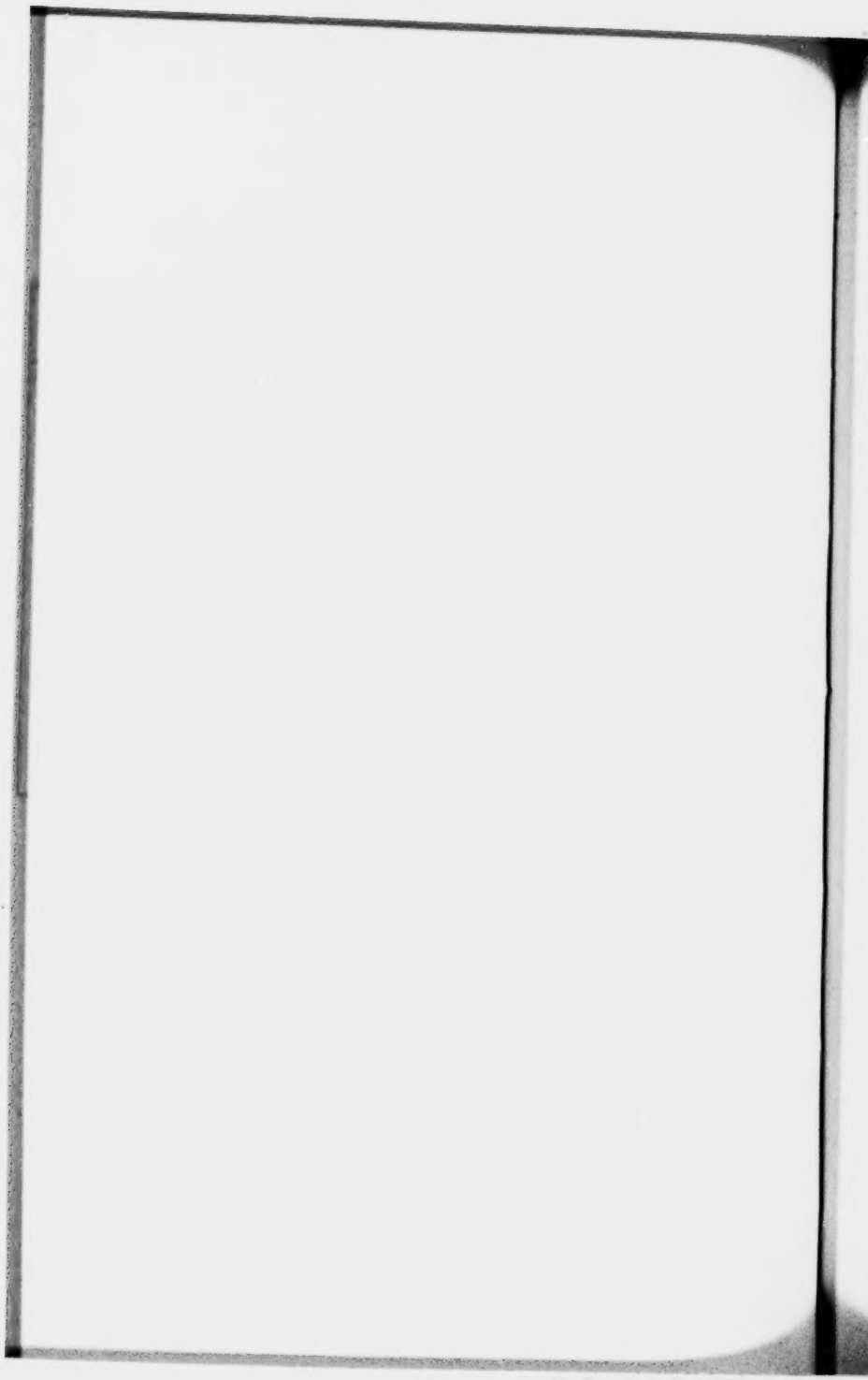
Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

TONNAGE OF MANUFACTURES AND MISCELLANEOUS ORIGINATED ON LINE F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
	(Thousands of tons)				
1940	778	3,365	2,620	31,940	267,174
1941	779	4,753	3,518	42,158	342,972
1942	1,022	6,324	4,537	46,340	366,091
1943	1,465	7,121	5,296	50,411	395,266
1944	1,373	7,357	5,494	55,701	434,736
1945	1,182	6,290	4,986	54,554	417,070
1946	1,471	6,287	4,962	51,688	373,322
1947(B)	1,556	6,128	5,138	56,896	407,475
Per cent 1947 over 1940	100	82	96	78	53
9 Mos. ended Sept. 30, 1947(B)	1,122				
9 Mos. ended Sept. 30, 1948(B)	1,081				
Per cent decrease	4				

(A) Including Atlanta, Birmingham & Coast R.R.
(B) Includes forwarder traffic

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.



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TONNAGE OF PETROLEUM AND PRODUCTS
TERMINATED ON LINE
F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	220,692	1,000,442	537,171	7,115,191	50,909,253
1941	228,044	1,164,280	663,870	8,025,218	55,382,836
1942	315,295	1,304,393	944,848	7,635,397	54,278,296
1943	625,222	1,170,113	853,907	5,821,805	53,875,890
1944	441,767	1,040,757	715,815	5,933,123	55,931,392
1945	225,746	815,609	524,419	5,646,863	50,819,209
1946	258,773	1,271,790	724,097	7,628,533	47,911,700
1947	264,443	1,360,647	717,812	8,497,056	48,828,679
Per cent 1947 over 1940	20	36	34	19	- 4
9 Mos. ended Sept. 30, 1947	201,556				
9 Mos. ended Sept. 30, 1948	159,267				
Per cent decrease	21				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

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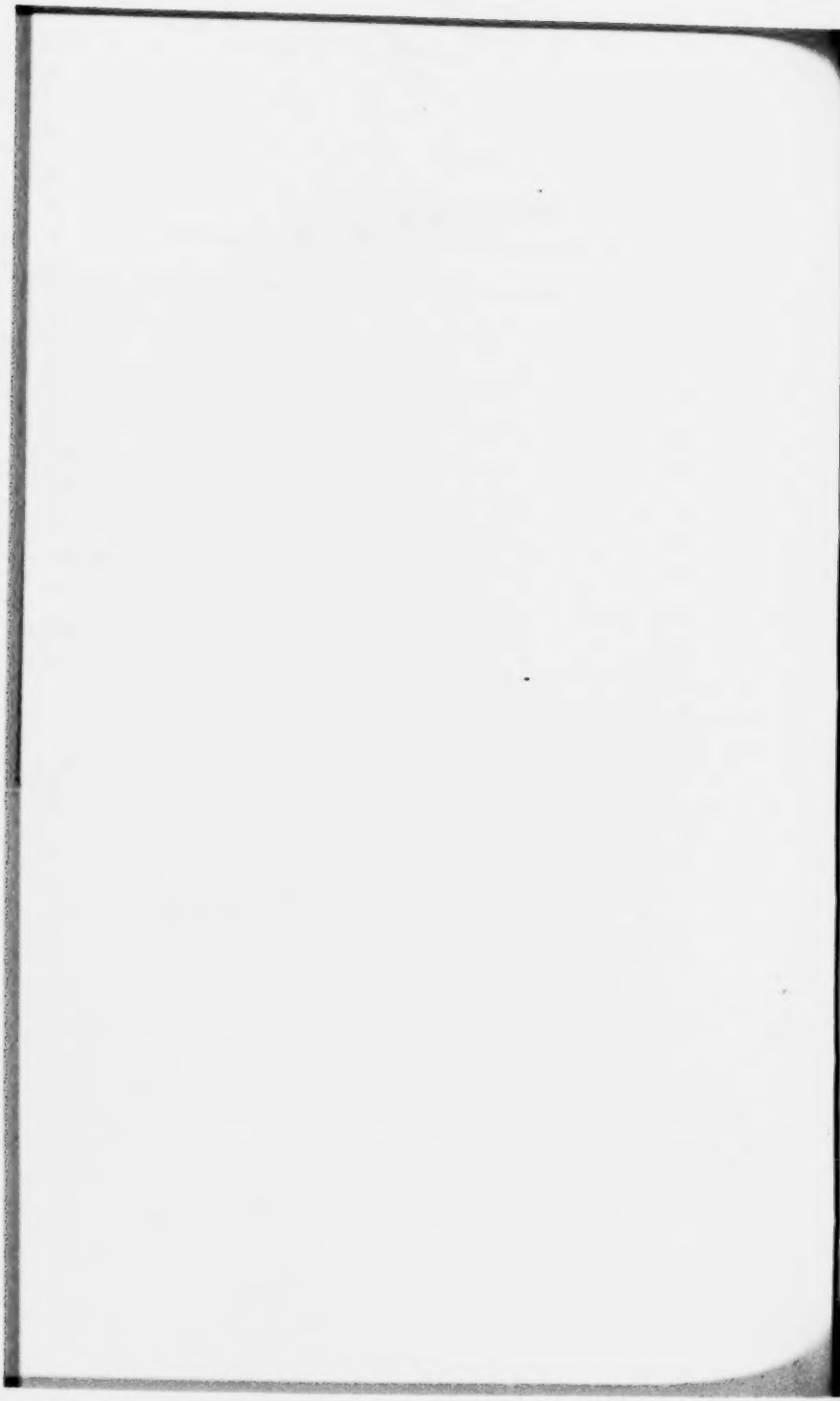
TONNAGE OF FERTILIZERS, N.O.S., TERMINATED ON LAKE F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	88,172	688,415	342,761	4,259,096	9,592,943
1941	90,524	857,395	413,230	5,053,252	11,761,936
1942	100,243	1,093,215	537,734	5,848,096	13,290,139
1943	139,918	1,531,027	795,108	8,021,033	16,062,545
1944	182,985	1,555,627	842,618	9,149,855	18,766,060
1945	171,089	1,661,690	892,997	8,512,899	18,790,104
1946	188,273	1,822,182	980,025	9,328,080	21,859,101
1947	119,840	1,505,703	839,790	7,787,287	18,530,135
Per cent 1947 over 1940	36	119	145	83	93
9 Mos. ended Sept. 30, 1947	77,414				
9 Mos. ended Sept. 30, 1948	73,034				
Per cent decrease	6				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.



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TONNAGE OF MANUFACTURED IRON AND STEEL TERMINATED ON LINE F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	27,636	105,963	105,514	1,796,519	38,843,194
1941	28,578	196,797	181,268	2,620,043	52,629,922
1942	28,910	516,478	288,458	3,535,006	57,520,624
1943	24,440	753,424	352,622	3,758,555	60,842,586
1944	27,888	798,378	506,379	4,366,089	61,926,012
1945	27,218	319,367	247,750	3,366,462	52,609,944
1946	44,937	149,165	215,599	2,363,807	42,368,288
1947	56,172	144,125	193,784	2,567,876	39,005,593
Per cent 1947 over 1940	103	36	87	43	(B)
9 Mos. ended Sept. 30, 1947	38,132				
9 Mos. ended Sept. 30, 1948	46,431				
Per cent increase	22				

(A) Including Atlanta, Birmingham & Coast R.R.
(B) Less than 0.5 per cent

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

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TONNAGE OF CAST-IRON PIPE AND FITTINGS
TERMINATED ON LINE
F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	12,863	28,701	17,662	260,076	886,276
1941	8,733	52,737	26,011	381,430	1,264,788
1942	10,636	42,649	46,843	331,955	1,342,229
1943	9,122	26,060	14,543	180,733	703,077
1944	5,442	17,154	5,577	167,695	592,501
1945	9,441	15,995	21,136	213,292	663,873
1946	13,742	19,262	23,866	222,733	823,018
1947	16,372	17,411	31,466	323,778	1,193,378
Per cent 1947 over 1940	27	- 39	78	24	35
9 Mos. ended Sept. 30, 1947	11,967				
9 Mos. ended Sept. 30, 1948	11,687				
Per cent decrease	2				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

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TONNAGE OF MACHINERY AND PARTS AND TANKS TERMINATED ON LINE F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	4,210	19,947	17,320	220,286	2,082,829
1941	4,473	41,714	31,763	374,754	2,983,737
1942	7,801	76,572	39,173	419,774	4,096,587
1943	8,645	90,791	61,092	519,153	5,391,784
1944	9,585	92,684	65,587	573,537	5,658,490
1945	9,346	68,345	56,921	547,267	4,919,360
1946	10,424	34,268	34,696	391,404	3,602,226
1947	19,801	58,333	58,717	716,529	5,585,375
Per cent 1947 over 1940	370	192	239	224	168
9 Mos. Ended Sept. 30, 1947	13,135				
9 Mos. ended Sept. 30, 1948	13,229				
Per cent increase	1				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

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TONNAGE OF AUTOMOBILES, PASSENGER, REVENUE AND OTHER
F.E.C. RY. VS U.S., SOUTHERN REGION AND CONNECTING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	10,527	35,165	28,949	281,230	2,168,489
1941	11,589	44,332	33,296	318,660	2,276,868
1942	1,836	6,895	4,306	63,486	327,737
1943	1,897	5,540	5,195	50,903	310,581
1944	1,470	6,472	3,826	55,309	234,820
1945	1,201	5,640	3,024	51,791	273,562
1946	11,161	40,011	19,734	215,718	1,522,298
1947	20,687	36,905	23,173	236,885	2,004,691
Per cent 1947 over 1940	97	5	-20	-16	-8
9 Mos. ended Sept. 30, 1947	14,277				
9 Mos. ended Sept. 30, 1948	16,509				
Per cent increase	16				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

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TONNAGE OF CEMENT, NATURAL AND PORTLAND,
TERMINATED ON LINE
F.E.C. RY. VS U.S. SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	155,023	314,267	251,455	2,714,074	19,504,159
1941	136,094	538,974	392,734	3,913,434	25,118,644
1942	148,050	633,727	494,354	4,568,673	28,250,161
1943	97,931	427,368	416,459	3,358,449	19,051,021
1944	89,578	224,188	166,943	2,181,905	13,252,879
1945	112,486	264,380	240,294	2,408,757	15,334,736
1946	256,666	504,087	416,870	4,014,985	24,924,722
1947	319,307	472,896	504,553	3,880,514	26,198,305
Per cent 1947 over 1940	106	50	101	43	34
9 Mos. ended Sept. 30, 1947	230,793				
9 Mos. ended Sept. 30, 1948	235,021				
Per cent increase	2				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

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BLEED THROUGH

COVERDALE & COLPITTS

TONNAGE OF PAPERBOARD, FIBREBOARD, PULPBOARD AND MILLBOARD TERMINATED ON LINE
F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	2,451	18,982	23,647	414,545	3,312,343
1941	2,406	30,233	29,603	554,652	4,535,861
1942	6,727	32,063	33,377	517,105	4,520,977
1943	3,889	37,404	22,597	595,398	4,910,366
1944	4,689	31,398	22,489	620,420	5,097,360
1945	7,871	43,586	29,475	643,946	5,275,270
1946	4,950	46,715	39,051	616,485	5,261,478
1947	40,248	99,536	127,595	1,118,759	8,071,536
Per cent 1947 over 1940	1,542	424	440	170	144
9 Mos. ended Sept. 30, 1947	30,654				
9 Mos. ended Sept. 30, 1948	41,948				
Per cent increase	37				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

TONNAGE OF BUILDING PAPER AND PREPARED ROOFING MATERIAL TERMINATED ON LINE F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	6,596	32,758	29,956	319,695	1,479,231
1941	10,339	49,821	39,791	422,034	2,021,284
1942	16,028	68,356	57,190	537,002	2,514,652
1943	14,235	59,065	54,070	490,144	2,367,056
1944	14,464	49,877	50,020	526,780	2,627,506
1945	18 150	56,001	58,362	565,532	2,775,809
1946	24,205	70,962	71,984	683,213	3,276,871
1947	36,973	108,963	98,397	926,881	4,021,773
Per cent 1947 over 1940	461	233	228	190	172
9 Mos. ended Sept. 30, 1947	26,448				
9 Mos. ended Sept. 30, 1948	27,072				
Per cent increase	2				

(A) Including Atlanta, Birmingham & Coast R.R.

Source; I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

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TONNAGE OF BEVERAGES
TRANSPORTED ON LINE
F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	19,334	26,727	48,649	276,312	2,669,363
1941	24,256	48,054	81,227	450,611	3,306,105
1942	38,529	101,782	130,708	762,271	4,707,408
1943	48,349	152,608	164,245	1,012,696	5,706,942
1944	60,176	186,485	184,272	1,275,595	6,913,519
1945	75,762	182,169	189,309	1,480,230	7,662,291
1946	77,073	153,742	157,816	1,081,734	6,791,547
1947	69,730	130,532	151,240	1,043,498	6,918,658
Per cent 1947 over 1940	261	388	211	278	159
9 Mos. ended Sept. 30, 1947	48,284				
9 Mos. ended Sept. 30, 1948	46,637				
Per cent decrease	3				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

TONNAGE OF SUGAR
TERMINATED ON LINE
F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	6,673	26,996	15,214	745,970	4,734,159
1941	15,201	36,438	26,550	950,677	5,573,415
1942	23,581	59,931	46,832	886,567	5,350,163
1943	29,490	111,723	103,644	1,085,064	6,399,721
1944	23,097	120,611	96,125	1,240,366	5,895,704
1945	23,591	78,342	69,429	1,030,112	5,078,394
1946	8,558	61,803	37,525	891,202	4,317,853
1947	9,638	68,544	63,498	1,292,702	6,562,703
Per cent 1947 over 1940	44	154	317	73	39
9 Mos. ended Sept. 30, 1947	6,791				
9 Mos. ended Sept. 30, 1948	22,640				
Per cent increase	233				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

TONNAGE OF FOOD PRODUCTS, N.O.S., IN CANS AND PACKAGES ORIGINATED ON LINE F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
1940	8,370	26,043	33,531	413,280	4,895,962
1941	12,036	39,498	74,401	682,098	7,259,249
1942	27,345	152,438	134,705	1,097,008	10,249,897
1943	39,169	271,195	208,512	1,414,787	11,922,418
1944	36,553	299,752	298,598	1,713,420	14,373,771
1945	44,272	332,307	338,514	2,004,661	15,896,307
1946	43,769	180,510	196,775	1,548,976	13,242,802
1947	50,786	162,740	183,760	1,505,763	12,199,595
Per cent 1947 over 1940	507	525	448	264	149
9 Mos. ended Sept. 30, 1947	35,903				
9 Mos. ended Sept. 30, 1948	45,491				
Per cent increase	27				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

TONNAGE OF TOTAL CARLOAD TRAFFIC
TERMINATED ON LINE
F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
	(Thousands of tons)				
1940	1,372	12,842	11,627	112,308	965,105
1941	1,388	16,997	15,166	144,066	1,177,735
1942	2,126	21,850	20,180	175,786	1,357,202
1943	3,383	23,546	19,217	176,510	1,365,521
1944	2,702	20,908	16,955	171,462	1,360,143
1945	2,124	20,255	16,885	169,914	1,307,300
1946	2,851	22,306	18,258	172,268	1,252,952
1947	3,065	22,840	20,429	194,172	1,384,334
Per cent 1947 over 1940	123	78	76	73	43
9 Mos. ended Sept. 30, 1947	2,226				
9 Mos. ended Sept. 30, 1948	2,060				
Per cent decrease	7				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

TONNAGE OF L.C.L. FREIGHT
TERMINATED ON LINE
F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
	(Thousands of tons)				
1940	54	250	265	2,514	14,406
1941	57	298	312	2,938	17,694
1942	60	351	298	3,041	17,230
1943	73	405	339	3,400	18,565
1944	82	419	349	3,591	19,831
1945	92	433	379	3,745	20,359
1946	113	485	419	4,459	23,891
1947	109	438	386	4,246	21,856
Per cent 1947 over 1940	102	75	46	69	52
9 Mos. ended Sept. 30, 1947	79				
9 Mos. ended Sept. 30, 1948	68				
Per cent decrease	14				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

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TONNAGE OF TOTAL CARLOAD AND L.C.L. TRAFFIC TERMINATED ON LINE F.E.C. RY. VS U.S., SOUTHERN REGION AND COMPETING RAILROADS

	F.E.C. Ry.	A.C.L. R.R. (A)	S.A.L. Ry.	Southern Region Excluding F.E.C.	All Class I Roads in U.S. Excluding F.E.C.
	(Thousands of tons)				
1940	1,427	13,091	11,892	114,821	979,510
1941	1,444	17,295	15,478	147,005	1,195,430
1942	2,186	22,201	20,478	178,827	1,374,432
1943	3,456	23,951	19,556	179,911	1,384,086
1944	2,784	21,326	17,303	175,053	1,379,974
1945	2,217	20,688	17,264	175,658	1,327,658
1946	2,963	22,791	18,677	176,728	1,276,843
1947	3,173	23,278	20,816	198,419	1,406,191
Per cent 1947 over 1940	122	78	75	73	44
9 Mos. ended Sept. 30, 1947	2,305				
9 Mos. ended Sept. 30, 1948	2,128				
Per cent decrease	8				

(A) Including Atlanta, Birmingham & Coast R.R.

Source: I.C.C. Freight Commodity Statistics, Class I Steam Railways in the United States;
F.E.C. Quarterly Freight Commodity Statistics.

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EXHIBIT 27
F.E.C. Ry Co
vs
FILED IN EVIDENCE
JAN 1 1949
Clerk

COVERDALE & COLPITTS

FLORIDA EAST COAST RAILWAY COMPANY

NET INCOME AVAILABLE BEFORE FEDERAL INCOME TAXES AND FIXED CHARGES, ADJUSTED TO ELIMINATE NONRECURRING ITEMS AND TO REFLECT CHANGES IN FREIGHT RATES, PASSENGER FARES, WAGE RATES, MATERIAL PRICES, ETC.

YEARS 1946, 1947 AND 1948

	1946	1947	1948
	(Thousands of dollars)		
ADJUSTMENTS FOR			
1. Nonrecurring Expense Items			
(a) Rail relaying program	$ 460	$ 894	$ 644
(b) Estimated deferred maintenance made up	232	217	292
(c) Estimated increased maintenance account hurricanes and floods		138	19
(d) Okeechobee branch retirement		832	-119
Subtotal	692	2,081	836
2. Nonrecurring Revenue Items			
(a) Estimated revenue losses account hurricanes, freezes and floods		692	265
(b) Retroactive Railway Express settlements	14	-20	-57
Subtotal	14	672	208
3. Operating Savings Resulting from Capital Expenditures			
(a) Port Pierce cut-off	204	51	
(b) New Diesel locomotives	159	74	
(c) Stainless steel passenger cars - rental	70		
(d) Shop machinery	5		
Subtotal	438	125	
4. Increased Rates and Fares			
(a) Freight rates	4,242	1,927	59
(b) Passenger fares	877	804	145
(c) Mail pay rates	124	20	
Subtotal	5,243	2,751	204
5. Increased Wage Rates, Material Prices and Taxes			
(a) Wage rates adjusted to Sept. 30, 1948	2,362	1,501	-45
(b) Fuel oil prices adjusted to Sept. 30, 1948	1,328	876	117
(c) Diesel oil prices adjusted to Sept.30, 1948	307	204	23
(d) Material and other supplies adjusted to June 1948	1,876	935	
(e) Hire of freight cars adjusted to $1.50 rate	170	111	
(f) Railroad retirement tax adjusted to current basis	414	86	-2
(g) Railroad unemployment tax reduced to present basis	-303	-316	
(h) Ad valorem taxes adjusted to 1948 assessed value and rates	57	1	
Subtotal	6,211	3,404	93

SUMMARY OF ADJUSTMENTS

	1946	1947	1948
	(Thousands of dollars)		
Additions to Net Available			
(1) Nonrecurring expense items	$ 692	$2,081	$ 836
(2) Nonrecurring revenue items	14	672	208
(3) Operating savings from capital expenditures	438	125	
(4) Increased rates and fares	5,243	2,751	204
Total Additions to Net Available	6,387	5,629	1,248
Deductions from Net Available			
(5) Increased wage rates, material prices and taxes	6,211	3,404	93
Net additions to net available	176	2,225	1,155
Reported net available for Federal income taxes and fixed charges	3,282	297	1,700(A)
Adjusted net available for Federal income taxes and fixed charges	3,458	2,522	2,855

(A) Estimated

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2 a Equal Sheets

FLORIDA EAST COAST RAILWAY COMPANY
Scott M. Loftin and John W. Martin, Trustees

I.C.C. 28
FILED
JAN 1 1 1949
WILLIAMS

GENERAL BALANCE SHEET - SEPTEMBER 30, 1948

ASSET SIDE

	INVESTMENTS			
701	Road and equipment property		$ 87,830,402.25	
702	Improvements on leased property		22,999.36	
702-B	Donations and grants		1,055,485.03-CR.	
702-C	Accrued depreciation - Road		1,876,774.09-CR.	
702-D	Accrued depreciation - Equipment		10,208,286.20-CR.	
702-F	Accrued amortization of defense projects-Equipment		1,369,927.99-CR.	
704	Capital and other reserve funds		2,156,552.83	
705	Miscellaneous physical property		291,355.75	
706	Investments in affiliated companies:			
	(a) Stocks		882,040.66	
	(b) Bonds		187,001.00	
	(c) Investment advances		633,273.27	
707	Other Investments:			
	(a) Stocks		150,635.72	
	(c) Other secured obligations		60,000.00	
	(d) Unsecured notes		1,522.10	
		TOTAL		$ 77,707,274.69
	CURRENT ASSETS			
708	Cash		$ 20,689,872.19	
711	Special deposits		82,576.79	
712	Loans and bills receivable		298,113.45	
713	Traffic and car-service balances-Dr.		397,409.64	
714	Balances receivable from agents and conductors		212,753.02	
715	Miscellaneous accounts receivable		1,012,272.61	
716	Material and supplies		3,606,365.40	
717	Interest and dividends receivable		16,430.82	
718	Accrued accounts receivable		188,647.41	
719	Other current assets		60,645.88	
		TOTAL		$ 26,565,087.21
	DEFERRED ASSETS			
720	Working Fund advances		$ 3,630.73	
722	Other deferred assets		163,405.59	
		TOTAL		$ 167,036.32
	UNADJUSTED DEBITS			
723	Prepayments		$ 98,876.63	
725	Discount on funded debt		1,661,185.12	
727	Other unadjusted debits		68,391,574.03	
728	Securities issued or assumed-Unpledged	$ 3,811,000.00		
		TOTAL		$ 70,151,635.78
		GRAND TOTAL		$ 174,591,033.96

FLORIDA EAST COAST RAILWAY COMPANY
Scott M. Loftin and John W. Martin, Trustees

GENERAL BALANCE SHEET - SEPTEMBER 30, 1948

LIABILITY SIDE

	STOCK				
751	Capital Stock (common)			$ 37,500,000.00	
			Total		$ 37,500,000.00
	LONG TERM DEBT				
755	Funded Debt unmatured			53,189,000.00	
	Actually issued	$57,000,000.00			
	Nominally Outstanding	3,811,000.00			
756½	Equipment obligations			3,276,025.42	
757	Amounts payable to affiliated companies			1,900,000.00	
			Total		$ 58,365,025.42
	CURRENT LIABILITIES				
759	Traffic and car-service balances - Cr.			$ 1,188,585.68	
760	Audited accounts and wages payable			1,364,568.59	
761	Miscellaneous accounts payable			459,555.34	
762	Interest matured unpaid			77,292.79	
764	Unmatured interest accrued			136,728.95	
766	Accrued accounts payable			356,874.23	
767	Taxes Accrued			2,244,905.32 Dr.	
768	Other current liabilities			22,747.44	
			Total		$ 1,361,447.70
	DEFERRED LIABILITIES				
769½	Interest in default			$ 44,653,751.65	
770	Other deferred liabilities			626,571.80	
			Total		$ 45,280,323.45
	UNADJUSTED CREDITS				
778	Other unadjusted credits			$ 68,440,956.43	
779	Accrued depreciation-Leased property			2,011.86	
			Total		$ 68,442,968.29
	SURPLUS				
786	Earned surplus - Unappropriated		Debit	$ 36,358,730.92	
			Total		$ 36,358,730.92 Dr.
			GRAND TOTAL		$ 174,591,033.94

Accounting Department,
Saint Augustine, Florida,
November 12, 1948.

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J. A. Lynch Exc No 29

EXHIBIT 29
In E. C. Ry Co
VS
FILED
JAN 1 1 1949
Andrew H. Watkins, Clerk

FLORIDA EAST COAST RAILWAY COMPANY

Comparative Balance Sheet
12-31-47 Vs 12-31-40
(Excludes Interest Accruals on 1st & Ref 5% Bonds and Amortization of Discount on Funded Debt since 12-31-40)

Assets	Balances 12-31-47	12-31-40	Inc/Dec
INVESTMENTS			
Inv'mts in Road & Equip	$ 87,293,644	$82,160,571	$ 5,133,073
Improv on Leased Property	22,959	19,985	2,974
Miscel Physical Property	290,549	320,473	29,924d
Total	$ 87,607,152	$82,501,029	$ 5,106,123
Less:			
Accrued Depreciation	$ 11,482,451	$ 7,930,639	$ 3,551,812
Accrued Amort of Def Pjcts	1,323,153	-	1,323,153
Donations & Grants	1,044,150	114,105	930,045
Net Inv'mts in Prpty Accts	$ 73,757,398	$74,456,285	$ 698,887d
Capital & Oth Rsv Funds	1,907,360	68,557	1,838,803
Inv'mts in Aff Co's	1,694,947	1,809,632	114,685d
Other Investments	211,353	52,338	159,015
TOTAL INVESTMENTS - NET	$ 77,571,058	$76,386,812	$ 1,184,246
CURRENT ASSETS			
Cash	$ 18,597,876	$ 1,301,857	$17,296,019
Special Deposits	316,866	15,100	301,766
Material & Supplies	3,881,363	1,791,727	2,089,636
Other Current Assets	2,823,626	550,556	2,273,070
TOTAL CURRENT ASSETS	$ 25,619,731	$ 3,659,240	$21,960,491
DEFERRED & UNADJ ACCTS (Netted in Liabilities)	$ -	$ -	$ -
TOTAL ASSETS	$103,190,789	$80,046,052	$23,144,737

d - decrease

(Page 1 - Assets)

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FLORIDA EAST COAST RAILWAY COMPANY

Comparative Balance Sheet

12-31-47 Vs 12-31-40

(Excludes Interest Accruals on 1st & Ref 5% Bonds and Amortization of Discount on Funded Debt since 12-31-40)

Liabilities	Balances 12-31-47	12-31-40	Inc/Dec
12-31-40 CAPITAL EQUITY (Deficit) - - - - (Capital Stock of $37,500,000 less Discount on Funded Debt at 12-31-40 of $2,158,058 and Deficit at 12-31-40 of $40,235,888)	$ 4,893,946d	$ 4,893,946d	
LONG TERM DEBT			
1st Mtge 4½% Bonds	$ 8,189,000	$12,000,000	$ 3,811,000d
1st & Ref 5% Bonds	45,000,000	45,000,000	-
Equipment Obligations	3,488,715	1,296,000	2,192,715
Accts Pay to Aff Co's	1,900,000	1,900,000	-
TOTAL LONG TERM DEBT - - - - - - - -	$ 58,577,715	$60,196,000	$ 1,618,285d
CURRENT LIABILITIES			
Interest Matured Unpaid	$ 190,009	$ 12,100	$ 177,909
Unmatured Interest Accrued	34,355	53,280	18,925c
Accrued Tax Liability	2,674,129d	317,271	2,991,400d
Other Current Liabilities	3,604,045	1,025,372	2,578,673
TOTAL CURRENT LIABILITIES	$ 1,154,280	$ 1,408,023	$ 253,743d
12-31-40 INTEREST UNPAID ON 1ST AND REF 5% BONDS - - - - - - - - - - - -	$ 17,625,000	$22,125,000	$ 4,500,000d
DEFERRED & UNADJ ACCTS - NET - - - - - -	$ 709,238	$ 1,210,975	$ 501,737d
EARNED SURPLUS (Since 12-31-40) - - - - -	$ 30,018,502	$ -	$30,018,502
TOTAL LIABILITIES	$103,190,789	$80,046,052	$23,144,737

d - debit balances or decreases

(Page 2 - Liabilities)

L a. Lynch Ex no. 30

4827 Ab-1

EXHIBIT 30
F. E. C. Ry Co

JAN 1 1 1949

FLORIDA EAST COAST RAILWAY COMPANY
Consolidated Income & Earned Surplus Statement
Period 1-1-41 thru 12-31-47

(Exclusive of any Interest Accruals on 1st & Ref 5% Bonds and exclusive of any Amortization of Discount on Funded Debt)

		Amount
TOTAL RAILWAY OPERATING REVENUES		$179,795,321
TOTAL RAILWAY OPERATING EXPENSES		120,774,944
NET REVENUES FROM RAILWAY OPERATIONS		$ 59,020,377
Railway Tax Accruals - Federal Income	$7,468,500	
- Other	8,880,700	
- Total		16,349,200
RAILWAY OPERATING INCOME		$ 42,671,177
Net Rents Payable		6,854,166
NET RAILWAY OPERATING INCOME		$ 35,817,011
Other Income		1,200,461
TOTAL INCOME		$ 37,017,472
Miscellaneous Deductions from Income		717,117
INCOME AVAILABLE FOR FIXED CHARGES		$ 36,300,355
Fixed Charges -		
Rent for Leased Roads & Equipment	$ 7	
Interest - 1st Mtge 5% Bonds	3,447,390	
- Equipment Obligations	303,166	
- Other Miscel Interest	271,395	
Other Fixed Charges	7,802	
Total Fixed Charges		4,029,760
INCOME AFTER FIXED CHARGES		$ 32,270,595
Income Applied to Sinking & Other Res Funds		165
BALANCE OF INCOME TRANSF TO SURPLUS		$ 32,270,430
Legal		
Net Surplus Adjustments		2,251,928
NET ADDITIONS TO SURPLUS (Accruing to the 1st & Ref Bondholders and available for Other Corporate Purposes)		$ 30,018,502

D.A. Lynch Ex No 3
4827 SA

EXHIBIT 31
F.E.C. Ry CO
FILED
JAN 1 1 1943

FLORIDA EAST COAST RAILWAY COMPANY
Income Available for Fixed Charges & Federal Income Taxes
By Years 1941 thru 1947

Year	Income Available for Fixed Charges	Federal Income Tax Accruals	Income Available for Fixed Charges and Federal Income Taxes
1941	$ 1,601,964	$ -	$ 1,601,964
1942	7,985,401	130,000	8,115,401
1943	10,310,519*	3,369,975	13,680,494
1944	5,835,252	4,403,885	10,239,137
1945	4,337,148	2,216,057	6,553,205
1946	4,533,531	1,251,417cr	3,282,114
1947	1,696,540	1,400,000cr	296,540
Total	$ 36,300,355	$ 7,468,500	$ 43,768,855

* Adjusted to eliminate so-called penalty interest on unpaid interest on 1st & Ref 5% Bonds accrued in 1943 for 1942.

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FLORIDA EAST COAST RAILWAY COMPANY

Increase in Net Worth
from 12-31-40 thru 12-31-47

Increase in Property & Investments:			
Gross Addition & Betterments in Capital Accounts - -		$13,079,379	
Less: Gross Retirements - - - - - - - - - - - - - -		7,973,256	
Net Additions & Betterments - - - - - - - - - - -		$ 5,106,123	
Capital & Other Reserve Funds - - - - - - - - - - -		1,838,803	
Investments in Affiliated Companies - - - - - - - -		114,685d	
Other Investments - - - - - - - - - - - - - - - - -		159,015	
Total Increase in Property & Investment -			$ 6,989,256
Increase in "Net Current Assets":			
Cash - - - - - - - - - - - - - - - - - - -	$17,296,019		
Special Deposits - - - - - - - - - - - - -	301,766		
Material & Supplies - - - - - - - - - - -	2,089,636		
Other Current Assets - - - - - - - - - - -	2,273,070		
Total -		$21,960,491	
Add: Decreases -			
In Current Liabilities - - - - -	$ 253,743		
In Net Deferred & Unadj Accts - -	501,737	755,480	
Total Increase in "Net Current Assets" -			22,715,791
Total -			$29,705,227
Add: Net Reduction in Long-Term Debt - - - - - - - - - -		$ 1,618,285	
Net Reduction in Interest in Default on 1st & Ref Bonds -		4,500,000	6,118,285
BALANCE (Represents Increase in Net Worth to 1st & Ref Bondholders, before "Accrued Depreciation and Amortization of Defense Projects") - - - - - - - - - - - -			$35,823,512
Less: Increases in Accrued Depreciation - - - - - - - -		$ 3,551,812	
Increases in Amort of Def Projects* - - - - - - - -		1,323,153	4,874,965
BALANCE (Represents Increase in "Net Worth" during Period)- - - - - -			$30,948,547
From Earnings - - - - - - - - - - - - - - - - -		$30,018,502	
From Donations & Grants - - - - - - - - - - -		930,045	
Total - - - - - - - - - - - - - - - - - -		$30,948,547	

* Amortization of Defense Projects was accelerated during this period decreasing the value of the property faster than it depreciated normally.

d - decrease

FOLLOWING FOLDOUTS TO LARGE TO BE FILMED

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St. Joe Paper Co. Exhibit 2.

FLORIDA EAST COAST RAILWAY COMPANY

Comparison of Cash Reserve Requirements in Second and Third Plans

Underlined figures indicate Decrease

	Second Plan (10 yrs.)	Third Plan (4 yrs.)	Increase Decrease—(Red)
ipment Maturities and payments	$ 5,819,215.00	$ 2,432,501.00	$3,386,714.00
t of Rail	6,677,000.00	6,074,000.00	603,000.00
t of Bridges	500,000.00	600,000.00	100,000.00
t of Stations and Terminals	3,335,000.00	2,450,000.00	885,000.00
t of Shop Machinery	250,000.00	187,500.00	62,500.00
t of other items		963,100.00	963,100.00
Total	$16,581,215.00	$12,707,101.00	
ss: Depreciation Accruals (Included $2,071,000.00 for Salvage of Old Rail)	14,311,665.00	6,851,550.00	7,460,115.00
	$ 2,269,550.00	$ 5,855,551.00	
rt Pierce Cut-Off	960,000.00	1,170,000.00	210,000.00
organization Expenses	500,000.00	600,000.00	100,000.00
orking Capital	500,000.00	500,000.00	
terials and Supplies		2,600,000.00	2,600,000.00
rmal Additions and Betterments	2,500,000.00	None	2,500,000.00
ferred Maintenance	1,091,400.00	None	1,091,400.00
serve for Income Taxes	870,000.00	None	870,000.00
	$ 8,690,950.00	$10,725,551.00	$2,034,601.00

[a] The decrease in the credit allowed in the third plan for depreciation accruals is attributable the change from a 10 year period to a 4 year period for completion of the program.

PY

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BLURRED CO

St. Joe Paper Co. Exhibit 3.

ATLANTIC COAST LINE RAILROAD COMPANY

Southern Division, Waycross District

Waycross, Georgia July 20, 1948 jb

Statistical: Pulpwood Loading.

All concerned:

Effective at once there will not be anymore pulpwood flats loaded on the Waycross District to Port St. Joe, Fla. All of the pulpwood loaded on this district to Port St. Joe much be loaded in boxes, vents or stock cars.

Each Agent and local freight conductor will see that no flat cars are placed up for pulpwood loading to Port St. Joe and will be held responsible for any violation of the foregoing instructions.

The yard forces at each yard must see that no pulpwood flats are forwarded on order for boxes, and if so, the agents and local freight conductors will see that they are not placed for loading to Port St. Joe.

In case of complaints from shippers, I will expect each of you to give an explanation in a diplomatic manner that will not bring us criticism from anyone.

Any violation of the foregoing instructions will be handled to a conclusion and whatever action is necessary to prevent a recurrence will be taken.

C. W. Veale
Superintendent, Acting.

CYS: All Agents
All Bulletin Books
N L Finley
M E Sparks
J B Tankersley

St. Joe Paper Co. Exhibit 4.

ATLANTIC COAST LINE RAILROAD COMPANY

Southern Division, Waycross District

Waycross, Georgia July 24, 1948 jb

Statistical: Pulpwood Loading.

All Concerned:

Referring to my bulletin of July 20 connection prohibiting the loading of pulpwood on flat cars to Port St. Joe.

Notwithstanding the fact that my bulletin requested that this matter be handled in such a manner as to avoid criticism from shippers, I am advised that a number of Agents have shown a copy of these instructions to shippers, which has resulted in severe criticism. I do not see why it is necessary to caution you about showing company correspondence to the public.

The management handed these instructions to us without any explanation as to why we were to prohibit the loading of pulpwood flats to Port St. Joe, and I can offer no explanation. It is our duty to see that these instructions are complied with without bringing on undue complaints from the shippers, and each agent and local freight conductor will be expected to handle the situation with each shipper in such a manner as to avoid complaints and criticism without making our records and files open to the public.

C. W. Veale
Superintendent, Acting.

CYS: All Agents
All Bulletin Books
N L Finley
M E Sparks
J B Tankersley

BLURRED CO

St. Joe Paper Co. Exhibit 5.

INTERSTATE COMMERCE COMMISSION

Bureau of Service

Washington 25

September 27, 1948

File: ACL-20-5

Mr. L. S. Jeffords
Vice President & General Manager
Atlantic Coast Line Railroad
Wilmington, North Carolina

Dear Mr. Jeffords:

Attached is a complaint by Gordon L. Hasty, Thomasville, Georgia, who is joined by Mr. Leo Bateman, Camilla, Ga., and Mr. A. S. Harris, Valdosta, Ga. Briefly, the complainants state they have been shipping pulpwood over your line to Port St. Joe, Fla. for several years, and your railroad has furnished a satisfactory supply of rack cars until about July 21, 1948.

Since that time, they have been permitted to load only stock or box cars which are not well adapted to the loading of pulpwood.

Complainants have submitted 12 photostatic copies of letters on the subject and three sworn affidavits. Attention is particularly directed to two letters written by C. W. Veale, Acting Superintendent, Atlantic Coast Line Railroad, Waycross, Ga., dated July 20 and 24, 1948, addressed to all concerned with copies to all agents. The first one is a definite order that all pulpwood loaded in that district to Port St. Joe must be loaded in boxes, vents or stock cars. The second paragraph prohibits the placing of flat cars for pulpwood to Port St. Joe. The second letter criticizes the

agents for showing the first letter to the shippers. In addition, the second letter states "management handed these instructions to us without any explanation as to why you were to prohibit the loading of pulpwood flats to Port St. Joe, and I can offer no explanation."

Apparently these orders result in undue discrimination and violations of Sections 1(4) and (11). Kindly advise the authority relied upon to support the objectionable practices and what steps will be taken to satisfy the complaint.

Yours very truly,

/S/ G. M. JACKSON
G. M. Jackson
Acting Director

Cy: F. C. Hillyer
Attorney at Law
227 W. Forsyth St.
Jacksonville 2, Fla.

Gordon L. Hasty
Sycamore Plantation
Thomasville, Ga.

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St. Joe Paper Co. Exhibit 5.

ATLANTIC COAST LINE RAILROAD COMPANY

Operating Department

Wilmington, N. C.

October 8, 1948.

Mr. G. M. Jackson,
Acting Director, Bureau of Service,
Interstate Commerce Commission,
Washington 25, D. C.

Dear Mr. Jackson:

Referring to your letter September 27, file ACL-20-5, also to conference in your office on October 4, at which time Mr. Andrews, General Superintendent Transportation, Atlantic Coast Line, was present, concerning complaint made by Mr. Gordon L. Hasty of Thomasville, Ga., who was joined by Mr. Leo Bateman of Camilla, Ga., and Mr. A. L. Harris of Valdosta, Ga., with respect to supply of woodrack cars for pulpwood loading:

As Mr. Andrews explained to you and others in attendance at the conference in Washington on October 4, the instructions issued by Superintendent Veale were due to a misunderstanding, and were cancelled on September 13. We are now furnishing pulpwood flats as available on pro-rata basis to Messrs. Hasty, Bateman and Harris, as well as other shippers on the Waycross District, and this practice will be continued.

Mr. Walker, General Superintendent, our line, Jacksonville, Fla., discussed this matter with Mr. Hillyer on October 6, at which time, Mr. Hillyer stated that the changed practice satisfies the complaint.

Very truly yours,

/S/ L. S. JEFFORDS
Vice-President and General Manager.

Cys—

Mr. F. C. Hillyer,
Attorney at Law,
227 West Forsyth Street,
Jacksonville, Florida.

Mr. Gordon L. Hasty,
Thomasville, Georgia.

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St. Joe Paper Co. Exhibit 6.

INTERSTATE COMMERCE COMMISSION

BUREAU OF TRANSPORT ECONOMICS AND STATISTICS
MONTHLY REPORT OF SELECTED INCOME AND BALANCE-SHEET ITEMS

ATLANTIC COAST LINE RAILROAD COMPANY

(Full name of reporting carrier. If a system report, give names of all operating roads included)

October
(Month of Report)

Figures for the Month		A. INCOME ACCOUNT ITEMS	Cumulative Figures	
1948	1947		1948	1947
(a)	(b)	(c)	(d)	(e)
62,309	$ 250,056	1. Net railway operating income	$ 4,117,417	$ 1,198,272
87,588	984,603	2. Other income (Accounts 502 and 509 to 520)	6,047,033	6,336,420
95,279	1,234,659	3. Total income (Items 1 and 2)	10,164,450	7,534,692
9,777	10,764	4. Miscellaneous deductions from income (Accounts 534, 535, 543 to 545, 549 to 551, and 557)	45,520	36,900
85,502	1,223,895	5. Income available for fixed charges (Item 3 less Item 4)	10,118,930	7,497,792
		6. Fixed charges.		
14,287	14,314	6-01. Rent for leased roads and equipment (Account 542)	142,940	143,217
11,952	311,844	6-02. Interest deductions (Accounts 546a, 546b, and 547)	3,123,030	3,234,300
—	—	6-03. Other deductions (Account 548)	—	—
26,239	326,158	6-04. Total fixed charges (Items 6-01, 6-02, and 6-03)	3,265,970	3,377,517
59,263	897,737	7. Income after fixed charges (Item 5 less Item 6-04)	6,852,960	4,120,275
1,924	1,972	8. Other deductions (Accounts 546c and 552a)	3,866	4,430
57,339	895,765	9. Net income after fixed charges and other deductions (Item 7 less Item 8)	6,849,094	4,115,845
23,149	314,926	10. Depreciation (Way and Structures and Equipment)	3,192,042	3,147,199
		11. Amortization of defense projects (Accounts 270½ Road and 331½ Equipment)	387,059	387,407
38,706	38,699			
—	*200,000*	12. Federal income taxes (Account 532)	2,650,000	700,000
23,427	823,427	13. Dividend appropriations (Accounts 553 and 614):		
		13-01. On common stock	3,293,708	3,293,708
—	—	13-02. On preferred stock	7,770	7,875

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St. Joe Paper Co. Exhibit 6.

B. Balance-Sheet Items—Selected Assets	Balance at End of Ma	
	1948	1947
(f)	(g)	(h)
17. Expenditures (gross) for additions and betterments (Accounts 701 and 702)—Road	$ 4,936,173	$ 4,729,5
18. Expenditures (gross) for additions and betterments (Accounts 701 and 702)—Equipment	2,983,377	1,206,8
19. Investments in stocks, bonds, etc., other than those of affiliated companies (Total, Account 707)	190,520	2,741,2
20. Other unadjusted debits (Account 727)	1,090,376	1,128,9
21. Cash (Account 708)	13,953,222	15,113,9
22. Temporary cash investments (Account 709)	2,500,630	—
23. Special deposits (Account 711)	600,374	685,9
24. Loans and bills receivable (Account 712)	317,197	317,1
25. Traffic and car-service balances—Dr. (Account 713)	1,010,198	1,120,7
26. Net balance receivable from agents and conductors (Account 714)	1,195,160	1,140,8
27. Miscellaneous accounts receivable (Account 715)	6,886,721	6,384,7
28. Materials and supplies (Account 716)	16,833,989	15,654,7
29. Interest and dividends receivable (Account 717)	772,882	751,6
30. Accrued accounts receivable (Account 718)	1,629,980	945,6
31. Other current assets (Account 719)	45,385	362
32. Total current assets (Items 21 to 31)	45,745,738	42,151,8

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St. Joe Paper Co. Exhibit 6.

B. Balance-Sheet Items—Selected Liabilities	Balance at End of Month	
	1948	1947
(i)	(j)	(k)
Funded debt maturing within 6 months*	$ 671,722	$ 544,340
Loans and bills payable (Account 758)	—	—
Traffic and car-service balances—Cr. (Account 759)	—	—
Audited accounts and wages payable (Account 760)	9,454,618	8,290,678
Miscellaneous accounts payable (Account 761)	2,847,942	2,513,480
Interest matured unpaid (Account 762)	101,175	122,252
Dividends matured unpaid (Account 763)	26,335	29,952
Unmatured interest accrued (Account 764)	970,738	977,680
Unmatured dividends declared (Account 765)	827,312	827,312
Accrued accounts payable (Account 766)	644,521	458,369
Taxes accrued (Account 767)	8,787,178	7,379,995
Other current liabilities (Account 768)	529,449	495,256
Total current liabilities (Items 41 to 51)	24,189,268	21,094,974
Analysis of taxes accrued (Account 767):		
53-01. U. S. Government taxes	6,578,254	5,301,622
53-02. Other than U. S. Government taxes	2,208,924	2,078,373
Other unadjusted credits (Account 778)	936,893	1,030,516

*Includes payments on account of principal of long-term debt (other than long-term debt in default) which will become due within 6 months after close of month of report.

St. Joe Paper Co. Exhibit 6.

For the use of the Interstate Commerce Commission only	INSTRUCTIONS	REMARKS
Examination and Correspondence: Date ..... By ..... Memo. or error..... Letter ..... Correction: Date ..... Authority ..... Subject	Under the Commission's order of October 21, 1944, Class I steam railways, excluding switching and terminal companies, are required to file monthly reports of income and balance-sheet items herein called for, in duplicate, in the Bureau of Transport Economics and Statistics, Interstate Commerce Commission, Washington, D. C., within 45 days after the end of the month to which they relate. The income and balance-sheet items in this monthly report should be taken from and agree with the accounts kept in conformity with current classifications prescribed by the Interstate Commerce Commission relative to steam railway accounts. The account numbers in the "Item" column refer to the accounts in the classifications. Deficits, losses, decreases, or other reverse items should be shown in red. State money items in units of dollars adjusted to accord with footings.	

OATH

STATE OF ....., COUNTY OF ....., *ss.:*

I, THE UNDERSIGNED, ..., ... of the
(Title of officer in charge of the accounts)

..... Company, on my oath do say that the annexed return has been
(Full name of reporting company)

prepared, under my direction; that I have carefully examined the same, and declare the same to be a complete and correct statement of the selected income and balance-sheet items for the month named, and that the various items here reported were, to the best of my knowledge, information, and belief, determined in accordance with the accounting rules promulgated by the Interstate Commerce Commission for steam railway companies.

SUBSCRIBED AND SWORN TO before me this ..... day of ....., 19....

....., ..., ... P. O.

address .....

St. Joe Paper Co. Exhibit 7.

The following is an excerpt from the minutes of the meeting of the Executive Committee of the St. Joe Paper Company, held at 1:30 P. M. on Wednesday, January 12, 1949, at 1514 Barnett Building, Jacksonville, Florida.

> "RESOLVED that the President or Treasurer of the Company be authorized to say that the St. Joe Paper Company will accept all stock for its first and refunding bondholdings if a plan of reorganization of the Florida East Coast Railway is promulgated under which:
>
> All first and refunding bondholders shall receive their proportionate share of an authorized capitalization of $40,500,000 of a reorganized Florida East Coast Railway Company, in the form of $100 stated value common stock; that is, for each $1,000 bond owned the holder shall receive nine shares of common stock. If any present bondholder is unwilling to accept such stock, in whole or in part, in return for his present bonds, he may demand and receive, either in whole or in part, 4 percent fixed interest bonds, fully secured as to both principal and interest by a first mortgage on the Florida East Coast Railway and callable at par on any interest date; that is to say, if a present bondholder demanded half stock and half bonds, he would receive 4½ shares of common stock and $450 face amount 4 percent fixed interest bonds; or, if he should demand all bonds and no stock, he would receive $900 face amount 4 percent fixed interest bonds."

I, ROGER L. MAIN, Secretary of the Executive Committee of the St. Joe Paper Company, certify that the above is a true and correct copy of an excerpt from the minutes of

the meeting of the Executive Committee of the St. Joe Pape
Company held on January 12, 1949.

IN WITNESS WHEREOF, I have hereunto set my hand thi
13th day of January, 1949.

.....
Secretary, Executive Committe
St. Joe Paper Company

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